

THE ADMINISTRATION OF THE SCOTTISH BORDERS IN THE SIXTEENTH CENTURY

Thomas Ian Rae

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1.

THE ADMINISTRATION OF THE

SCOTTISH BORDERS

IN THE

SIXTEENTH CENTURY

being a thesis presented by

THOMAS IAN RAE

to the University of St Andrews

in application for the degree of Doctor of Philosophy



I hereby declare that the following thesis is based on the results of research carried out by me, that the thesis is my own composition, and that it has not previously been presented for a higher degree.

The research was carried out in St Andrews and Edinburgh between October 1952 and August 1960.

Thomas I. Rae.

CERTIFICATE

I certify that Thomas Ian Rae has spent nine terms engaged in research work in St Andrews and Edinburgh; that he has fulfilled the conditions of Ordinance No. 16 (St Andrews); and that he is qualified to submit the accompanying thesis in application for the degree of Doctor of Philosophy.

Ronald G. Cant.

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Chapter 1. The Borders

The Anglo-Scottish frontier, to use the terminology evolved recently by an eminent social anthropologist, was a 'static' frontier, that is, a frontier between two states of roughly similar powers and capacities, a permanent frontier (1). The boundary line between the two states was the place where two different though not dissimilar forms of culture met, and, in the frontier region on either side of the boundary, the different political, economic and administrative ideas of Scotland and England came into conflict. The inhabitants of this region formed a frontier society, people who, although hominally either English or Scottish, tended to ignore the political boundary in their social relationships with each other, and who formed a social unit at variance with the central governments both in Edinburgh and in London (11).

The administration of this frontier region was three-fold. The English side of the frontier was controlled by officials governed by English administrative and political ideas, while on the Scottish side totally different Scottish methods of administration were used; at the boundary the administrators of two different systems of government met to attempt to solve by international negotiation the more complex administrative problems caused by criminal violations of the frontier. Historians of the frontier region have tended to concentrate their enquiries on one aspect only of border administration, the international duties of the officials known as the wardens of the marches. Important these duties

(1) Lattimore, pp.105, 117.

(11) of. ib., p.106.

were in the maintenance of order on the frontier, but they were complementary to the other purely internal duties performed by the same officials, and by other administrators acting in the area. A complete survey of frontier administration would therefore have to examine, in addition to the international system, the internal systems of both countries. The present work does not attempt to do this, but, while not ignoring English administration in the frontier region, is concerned mainly with the domestic problem of the Scottish government in controlling the inhabitants of the Scottish side of the frontier, and looks at international administration from the point of view of the Scots.

Isolation characterised the Scottish border region - isolation not only of the area as a whole from the rest of Scotland, but also internal isolation, dale separated from dale, district from district. This affected the character of the people; it created self-reliance, and this in turn was stimulated by the constant proximity of enemies not only across the international frontier but also in the next valley. The families of each dale thus tended to be thrown together to form small self-sufficient units possessing an independence of outlook still traceable today. The isolation of the area, and the independence of the people, who resented all forms of external authority, made any form of administration difficult, a fact which created a challenge for all strong Kings of Scotland. This administrative difficulty was complicated by the facts that England, the trans-frontier state, had been implacably hostile since the end of the 13th century, and that the region was the battle-ground over which was waged the warfare continuous between the two kingdoms. The Crown was faced with a dilemma: if the desire for effective control was stretched too far and attempts were

made to impose too stringent a rule there, the independence of the inhabitants might express itself in a voluntary, though probably temporary, submission to the English enemy; but if, on the other hand, no effective rule at all was imposed, the resulting weakness of the country, broken by disturbances which knew no international frontiers, would encourage exploitation by the English. In either case the real danger was occupation of the territory by the enemy and the removal of Scotland's only natural defensive bulwark.

To the Crown the problem of the borders was primarily an administrative one, created initially by the geographical aspects of the area and the character of the society inhabiting it. The physical characteristics of the region show clearly its isolation, but at the same time indicate how that isolation could partly be broken down, the routes by which officials could bring justice to it and move about within it. The social organisation of the people of the region explains to a certain extent their lawlessness and turbulence, and their resentment of central authority. These factors, which accordingly had considerable influence on the forms of administration devised to deal with the problem, will now be examined in some detail.

1. The Country and the People.

The South of Scotland is an upland region which, in terms of physical geography, divides itself naturally into two sub-regions - to the east, the basin of the Tweed, and to the west, Galloway and the Dales (1).

(1) See Map 1.

The Tweed basin is almost entirely enclosed by a ring of hills which may be likened to a horseshoe. The north-east end is represented by Goldingham Moor, about 700 feet high and close to the coast; the northern shank is formed by the Lammermuir and Moorfoot Hills, well-defined ridges more than twice that height. The south-east end is the Cheviot, a hill 2,700 feet high and about 15 miles inland at the eastern extremity of the Cheviot Hills, and these hills form a well-defined ridge, rising on an average to 1,400 feet, which comprises the southern shank of the horseshoe. The front of it is the heart of the Southern Uplands, where hills such as Hart Fell, Dollar Law and Broad Law rise to more than 2,600 feet. Within the rim of this horseshoe lies a plateau of medium height, intersected by the deep-cut dales of many swift-flowing rivers - Leader, Gala, Tweed itself, Yarrow, Ettrick and Teviot - each with numerous tributaries. This plateau in turn encloses the Merse or Border plain, the wide valley of the lower Tweed.

The relief of the western section of the Southern Uplands is L-shaped. The base of the L is to the north, formed by Cairnsmuir and the Lowther Hills, about 2,000 feet high, which are an almost direct continuation of the northern shank of the horseshoe already described; the arm of the L coincides with the front of the shoe, and continues into England to form the northern ridge of the Pennine Chain. Within these ridges of hills lies a plateau, also intersected by the steep-sided narrow valleys of rapid rivers - Cree, Dee, Mith, Annan, Esk and Liddel; and this plateau encloses the narrow coastal plain on the north bank of the Solway estuary.

In this difficult country of high plateaux and deep-cut dales routes have always been of special importance both for economic and administrative purposes. There are many routes to England and the South. At the east end of the frontier the Merse, with no natural obstruction save the easily fordable Tweed, joins on to the coastal plain of Northumberland to create an open passage almost fifteen miles wide; while in the West the Solway plain, unimpeded, links itself to the plain of Carlisle across the frontier, forming a similar though narrower gap. In addition to these wide coastal passages to the south, other routes were used in medieval times to cross the frontier to England. The well-known Wheel Causeway, which passed from the upper reaches of the Jed into Liddesdale, also gave access to the upper waters of the Kielder at Deadwater; and another route from the Jed valley led by Redeswyre into the Rede valley. The Roman Dere Street crossed the border from England; this section of it was used in the middle ages and was known as Camelspath. East of these routes lay two more; one passed from the Kale valley by Windygyle to the head streams of the Coquet, and the other from the Bowmont valley by Cooklaw to the Alwin; this latter road was called Hexpathgate in medieval times (i). It is significant that Redeswyre, Camelspath, Hexpathgate and Cooklaw were frequent meeting places of the wardens of the marches in the sixteenth century; these spots were obviously fairly accessible from both sides owing to the existence of these roads. In addition to these routes there were countless others through the Cheviot hills, less well-defined, but well known to the raiders who used them so frequently (ii). The region

(i) see Hardie, pp. 25-28; Haverfield, p.129.

(ii) Tough, p.29; of. the list of 'passages' compiled in 1597 for the middle march(C.B.P., ii, 853).

was therefore particularly open towards the south; the narrower passages were used for raiding expeditions by both sides, but it was through the wider coastal gaps that English - and Scottish - armies were accustomed to make their large-scale invasions.

From the north there are no wide easy routes into the region, nor, once inside, are there easy transverse routes from east to west; it was the lack of these which made the task of the governors of medieval Scotland so difficult. The military necessity of defending the area from an English invader and supplying the castles of Roxburgh, Jedburgh and Lochmaben, and the administrative necessity of maintaining order internally, made it essential that those routes which did exist should be exploited to the full. From Edinburgh, the centre of Scottish government in the later middle ages, there were four main routes to the border country. That following the east coast to Berwick was of little administrative importance as it led to the comparatively law-abiding area of the lower Tweed valley; it did, however, have considerable military and economic value as long as Berwick remained a Scottish port. The other three led to the heart of the border country. The most western of these pierced the gap between the Moorfoot and the Pentland hills, and, bypassing Peebles, led into the Clyde valley; this, following the river to its sources and across the watershed, led either to the upper waters of the Annan and Annandale, or, by the Well Path, to Nithsdale and Dumfries (1). The two more easterly routes took advantage of the Fala moor gap between the Moorfoot and the Lammermuir hills and passed into the Tweed valley, one by Weddale (Stow) and Gala water, the other by

(1) Inglis, Highways, p.218.

Soutra and the Leader. The latter route was known in the middle ages as 'Maloholmisrode', and sections of it probably coincided with the Roman Dere Street (1). These three routes were those generally used by royal troops engaged on administrative and judicial duties in the frontier region (See Chapter 5 (3)).

A number of transverse routes did exist in the region and were used in the middle ages (ii); and some of these were of considerable importance. One was in existence in the time of Alexander II for a charter of that period describes lands extending "ad regiam viam qua itur de valle anant versus Rokesburg" (iii); in later times this road probably linked the castles of Lockmaben and Roxburgh, and its great strategic value both for internal administration and for military movements against an enemy from the south is obvious (iv). The Wheel Causeway appears to have been part of a main road from Berwick to Carlisle, passing by Jedburgh and Roxburgh castles, the most natural and direct route between the two English towns. It was thus of prime strategic importance to the English during

(1) Hardie, p.87.

(ii) Hardie, pp.50-51 lists seven transverse routes:

1. The pass from the source of the Tweed by the Devil's Beef Tub to upper Annandale.
2. A route from the head of Yarrow to upper Annandale by Moffat Water.
3. A route across Eskdalemuir from the Tine to the White Esk.
4. The Craikmuir road from the head of the Borthwick into Eskdale and Annandale.
5. A route from the Teviot valley to Ewesdale by the Frostlie and Moss-paul burns.
6. The passage from the Slitrig into Liddesdale. (Hardie asserts that this road went by the Note o' the Gate pass; but this is on the Rule valley, not the Slitrig. The route probably went by Limekiln Edge as the modern road goes.)
7. The Wheel Causeway route from the Jed valley to Liddesdale, probably by Ravenburn and Peel burn.

To these seven should be added another, from the Rule valley to Liddesdale by the Note o' the Gate (see the map in Inglis, Highways, p.209) Hardie does not give examples of the use of all these routes in the middle ages; but geographically they are natural routes, and those most likely to be used at the time. See Map 1.

(iii) Lib. de Mel., 244.

(iv) This road is discussed in Hardie, pp.35,39-6

their occupation of this area, and at other times, because direct communication from East to West within England was otherwise almost impossible without making a considerable detour to the South. In 1544 when the English wished to build up on the East March a large force to raid Scotland, it was asserted that the men of the West March could not join their comrades in the East except by using this route through Liddesdale; difficulty in using it led to the abandonment of the raid on the scale originally contemplated (i). This factor explains not only the importance to the English of retaining the two castles on the route within their power as long as possible, but also, from the Scottish viewpoint, the necessity for their recovery in order to disrupt the main English transverse line of communication (ii).

All these routes must have been in continuous use in the middle ages for the transport of military supplies. It was Malholmisrode which was probably used for the transport of the Scottish guns to Flodden (iii). In 1523 Lord Yester, as Sheriff of Peebles, was ordered to repair certain sections of the route within his sheriffdom which would be followed by the guns of a Scottish defensive army (iv); and again, in 1547, artillery was transported from Melrose to Langholm by Whitfield and Braidlee (v). Artillery was also moved along these routes for administrative purposes such as the siege of the stronghold of a recalcitrant baron (vi). Being used thus for both military and administrative purposes, these routes lessened the difficulty of internal administration for the Scottish government

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- (i) Hy.VIII, xix, 1, 223.
 - (ii) Inglis, Highways, pp.211-12
 - (iii) Inglis, Roads, p.329
 - (iv) T.A., v, p.226.
 - (v) T.A., ix, pp.87-96; of. Hardie, pp.48-50
 - (vi) e.g. T.A., v, p.323.

But they were rough and hilly roads, all of them with sections over 1,000 feet high, and it was always exceedingly difficult to move an army with all its attendant supplies and artillery along them; at no time ^{did} ~~with~~ their use make administration an easy matter.

The physical nature of this isolated region was important not only in indicating the routes by which both war and justice would be brought to it; it also determined the economic character of the area, and perhaps also the temperament of the inhabitants. Primarily an upland region, the main economy of the border country was pastoral; cattle, horses and sheep were reared, the latter being particularly important in the earlier medieval period through exploitation of the wool trade by the monks of the great border abbeys (i). However the coastal plains, the Dales and the Merse - which as a geographical region, though not as an historical district, extended far into Teviotdale - provided much rich arable land, a striking contrast to the grass and heather plateaux surrounding them. There the medieval agriculturalist grew his wheat, bere, oats, pease, beans and flax (ii). Even on fairly high ground crops were sometimes grown in medieval times by means of cultivation terraces (iii).

The difference between the arable and pastoral forms of husbandry has caused a distinction to be drawn between the inhabitants of the different economic regions of the border country. It has been asserted that the soil-tilling people of the Merse were more peace-loving than the rough shepherds of the hill country, who were never loath to steal their neighbours' flocks and herds; and that consequently the frontier incidents

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- (i) Franklin, pp.66-7.
(ii) Ogilvie, p.486.
(iii) Graham, passim.

(iv) ibid., pp.486.

which troubled relations between the two kingdoms were mainly caused by the latter (1). There are, of course, elements of truth in this generalisation, for it does seem to have been a fact that parts of the Merse were more law-abiding than the rest of the border country. But the distinction is too clearly made; an arable economy extended far into the hills, and even in the plains cattle and sheep were reared, a source of temptation to lawless neighbours on both sides of the frontier. Borderers as a whole were fearless of the law and all contributed towards both internal and trans-frontier disturbances.

In the later middle ages the inhabitants of the region thus lived a life determined partially by their geographical environment. They were isolated from the political and administrative centre of Scotland and their natural economic and social links were with the inhabitants of the English border region, similarly isolated from their political administrative centre in London. Together they carried on an essentially agricultural existence and developed their own social organisation, ignoring the more or less arbitrary political boundary which nominally separated them.

The social organisation of the border people had a dual character. One element of it was, like the social structure of the rest of lowland Scotland, built on a feudal basis; the social link between one man and another was based on the holding of land. The other element was based on the family, and kinship was the effective social link; this led to the development of kinship units analogous to the clan organisation developing at this same time in the Highland area. The existence of these two principles

(1) Hodgkin, pp.5-6

of social organisation, and their intermingling, created a very complex form of society in the border region.

Feudalism was introduced into the border region early in the 12th century by Earl David before he became King of the rest of Scotland; powerful landowners, natives and Normans of military and administrative ability, were established in the area, basing their power on strategically-sited wooden castles (i). The representatives of this class in the 16th century were the barons, men such as Lord Hume, Lord Maxwell, Ker of Cesford, Scott of Branxholme, Crichton of Sanquhar, Hume of Coldenknows, Douglas of Cavers and many others; viewed from the feudal aspect, they formed the upper ranks of border society, and were the men who possessed most power in local politics. From their feudal predecessors they inherited the sites of some of the stone-built castles and towers which were the physical bases of their power. Sanquhar castle, the seat of the Crichtons, built on a Norman site, commanded the passages from Upper Nithsdale to Kyle in the west and Higger in the North (ii); at the other end of the Nith valley protecting it effectively from invasion from the south was the Maxwell stronghold, Caerlaverock castle (iii); Hermitage castle, astride routes leading from Liddesdale to Teviotdale, belonged to the Lords of Liddesdale; Cesford castle, the strength of one branch of the Kers, controlled strategically some of the important raiding routes to the south. These more important castles belonged to the more important barons; but even the lesser members of this social rank each had his castle or tower from which he both administered his territory and defended it.

(1) Ritchie, pp. 169, 305-6.

(ii) Simpson, Sanquhar, p.258.

(iii) Simpson, Caerlaverock, p.123.

The castles were the symbols of this society, but often they were used only in emergencies - the Maxwells and Humes frequently resided in Edinburgh during the 16th century, and even Ker of Cesford had forsaken his border fortress for the comforts of his house at Halydean, on the lower slopes of the Milden hills (1). Although military necessities ruled many aspects of social life, they were not the main feature of border feudal society. The lower ranks were bound to the upper ranks by ties of landholding rather than those of military service, although military service formed one of the obligations of a man to his superior. In addition, he paid his rent in money and in various customary forms, including labour service. He depended on his superior for the very source of his subsistence, and looked to him for protection in both a military and a legal sense, the latter taking the form not only of defence in royal and other courts but also, frequently, the dispensation of justice in the lord's own baron or regality court. In conditions of general insecurity, the social link between tenant and landlord were bound to be exceptionally strong. Even the Church, as an extensive landowner, had to fit into this social system. James V, in a letter to Pope Paul III concerned with a nomination to the vacant abbey of Dryburgh, emphasised that an abbot was required who 'Non solum praefecturam claustræ novit gerere verum etiam qui foris fortem, liberalem et circumspectum patrem familias didicit agere' (11). The use of paterfamilias indicates the relationship which existed at this time between a landowner and his tenants and other dependants.

Being based on primitive tribal conceptions, a society linked together by kinship and family ties would be considerably older than a

(1) From a letter to Cesford in 1544, Halydean appears to have been his normal place of residence. (Hamilton, II, p.491)

(11) Theiner, p.612.

society built on more civilised feudal ideas of landholding, and it is probable that the feudal society of the 12th century was superimposed on such a system. The border kinship units of the 16th century, known as 'surnames', were not so much survivals of former groups, however, as the creation of processes of the 14th and 15th centuries; the earliest recorded use of the word 'surname' in this sense appears to be in 1498, when it was used to denote certain English border groups (i). In this respect they were remarkably similar to the Highland 'clans' which developed during the same period (ii). The weakness of the Scottish Crown, the disorganisation of its authority caused by the English inroads of the 14th century, and the consequent growth of social insecurity created a situation in which the inhabitants of the borders felt the necessity for social reorganisation; the geographical nature of the country when coupled with the existence of strong natural family ties led to the development of these kinship groups or surnames on both sides of the political frontier. The similarity of surname and clan as forms of social organisation was noted in the 16th century by the Scottish government, which accordingly tried to administer both Highlander and Borderer in the same way (iii).

(i) Bain, iv, 1649.

(ii) cf. Grant, pp.480, et seq.

(iii) The inhabitants of the central lowlands of Scotland suffered oppression equally from "the thevis and brokin men inhabiting the Bordouris and Hiellands." (R.P.C.S., iv, p.298). In 1587 Parliament passed an Act to control "the disorderit subiectis inhabitantis of the bordouris hiellandis and Ilis"; among its provisions was one to set up a special court to deal with cases brought against both borderers and highlanders (A.P.S., iii, p.461 et seq.) See also Chap. 5, Section 1, p.246.

The surnames of the Scottish borders were therefore organised social units held together basically by family ties. Although some of them, such as the Broomfields, the Trotters, the Davisons, the Taits and the Burns, inhabited the East March, it was on the other two marches, and particularly in Liddesdale, that these groups flourished. On the Middle March lived the Halls, the Robsons, the Ainslies and the Olivers; on the West March the Batisons, the Littles, the Irvings, the Grahams and the Bells; between them, in Liddesdale and Ewesdale, the Croziers, the Nixons, the Hendersons and the numerous groups of Armstrongs and Elliots (1). These were true kinship units; they were united groups acting together in all things, seeking vengeance together when one of their number was harmed, and often accepting joint responsibility when an individual was in trouble (ii). They possessed the land they occupied according to their own theories of landholding, probably based on tribal ideas, and generally succeeded in seeing that land descended among them in conformance with their own conceptions of property-succession; it is significant that in Liddesdale, where the surnames were strongest, the influence of feudal forms of landholding was scarcely felt (iii)

- (1) see Armstrong, pp.63-5, 175-185; R.P.C.S., iv, p.782 gives a list of 18 border surnames of the Middle and West Marches, apparently compiled in 1590. Two other contemporary lists of border surnames exist covering all the marches: one was compiled by John Moniepenney in 1597; the other, to be dated 1585 x 1595, is printed by Blair, p.87. These two lists are identical except for spelling variations.
- (ii) of. B.S.Phillpotts, Kindred and Clan, p.3. Joint responsibility is shown by the regulations governing the surrender of pledges to the central authorities (see Chap.5, section 2(b).) The pledge accepted the fact that any misdemeanour by a fellow member of his surname would lead to proceedings against himself; and the surname as a whole accepted the responsibility of maintaining good behaviour in order to protect the pledge from any legal proceedings.
- (iii) of. Phillpotts, p.248. "In regions where the kindred preserved its solidarity it would be far less easy for a wealthy landowner, or even for ecclesiastical foundations, to exploit the financial and social difficulties of a poor neighbour, by acquiring his lands or by extorting rights over him at a period of want."

Like Highland clans each surname had a leader, generally more than one. The evidence indicates that each surname had several "chiefe men"; the Trotters of the East March were under the control of four men of that name, while the Robsons had three leaders, and the Bells and the Irvings five each; the Armstrongs and the Elliots appear to have been divided into several groups, each with two or more principal leaders (i). These leaders were fairly closely related, and one of them was probably the senior, the chief proper; but although the leadership remained closely within the family, there appears to have been no principle of descent by primogeniture (ii). As with the Highland Clans, an efficient chief was essential to the wellbeing of the members of a border surname. He was responsible for providing for his kinsmen-followers by allocating them land to till and cattle to graze, or by distributing to them the proceeds of raids on the lands and cattle of neighbouring noblemen or surnames; he had to defend their goods and persons from both military and legal attack, and he appears also to have administered law among the group. In short, he performed for the members of the kinship unit roughly the same functions performed by a feudal landlord for his tenants and dependents.

Closely linked with the border surnames and often confused with them were those groups described as "clannis of theifis, companeis of wikit men, coupled in fellowschippis be occasioun of thair surnames or neir duellingis togidder or throw keeping societie in thift." (iii). These were

(i) see list of surnames in Moniepenry.

(ii) Primogeniture was not however ruled out entirely. Further research would be required into the family relationships of the leaders and the method of succession to the leadership before a clear picture could be drawn of the social organisation of these border surnames.

(iii) A.P.S., iii, p.218.

primarily brigand gangs, the members of which could be linked by ties of blood, but were more often bound merely by geographical propinquity and a common desire for a career of violence. The personnel of such gangs - and often of the surnames proper - is difficult to discover, largely because of the border habit of giving to each individual nicknames, or 'to-names', referring to their descent, place of residence or their personal characteristics - such as "Patie's Geordie's Johnie", "Jock of the Side", "Red Rowie", "David the Lady" (i). These groups appear to have had a leader or chief who led the members in their raiding exploits, and provided for them in other ways. The composition of such gangs was, however, much more vague than that of a surname proper. This can be shown by examining the conditions for the entry of pledges to the Regent Moray in 1569. The pledge of a surname proper entered "for himself, his brother, thair bairnis, branche, men, tenentis and servandis", a very clearly defined group of people. The pledges entered for the other groups were responsible for the much more loosely defined "bairnis and gang" of John Irving of Trailtrow, or the even vaguer "gang" of Moffats in Powbody (ii), groups whose composition may not have been known to the central authorities, or may even have been continually fluctuating.

These two principles of social organisation, based on kinship and on feudal landholding, existed on the Borders side by side, each with its own forms of social law and its own conception of loyalty. But although they differed so fundamentally, and their social ideas utterly conflicted, they could not be kept separate; the family bonds of the kinship unit

(i) for a fuller list of these nick-names see Armstrong, pp.78-9.
(ii) R.P.C.S., 11, pp.49, 44.

affected purely feudal relationships, and feudal ideas permeated kinship organisation. This resulted in a third form of social organisation, in which a powerful leader, generally a baron or a lord, used the ties both of feudalism and kinship to build a large highly-organised unit of social and political power. The leadership of such groups descended by strictly feudal rules of primogeniture, for the position was based ultimately on the possession of lands held feudally from the Crown. The most powerful border families - the Humes, the Kers, the Scotts, the Maxwells and the Johnstones - drew their strength from this source. Family feeling was strong; members of the group respected the head of the house even when only distantly related to him, and their devotion to him exceeded the cold feudal allegiance of a vassal, being "tinged with something of the warmer feeling of the clansman" (1). The name was the important thing; and Humes, Scotts and Johnstones almost without exception rallied round the standard of their hereditary leader.

But feudal influences were equally important in building up the power of the leader. Most of the land he possessed he held from the Crown by feudal tenure, and this he leased out to his kinsmen and followers just as other barons did, though perhaps with a greater partiality for those of his own surname; thus the subsistence he could offer his followers was based on his feudal position. He also used a feudal method of increasing the numbers of his followers - the bond of manrent, by which a man, not necessarily a kinsman, declared his willingness to become the lord's man, to be loyal and true to him in peace and war, to give him

(1) Grant, Economic History, p.52.

counsel, and to assist him in all matters against anyone except the King (i). In return the lord was expected to maintain his man, provide for him, and protect him by legal or military action against his enemies; this obligation was sometimes expressed in a bond of maintenance whereby he "faythtfullie promittis to fortife, menteyn, supple and debait" his man "contraire all men havand questiou, querrell and actioun aganis him" (ii). By such means these leaders could build up their strength beyond the limits of the kinship bond; in the early 16th century Robert Lord Maxwell, by extensive use of bonds of manrent, created on the West March an extensive political and social unit not limited to those of his own surname. Bonds were subscribed in his favour by representatives of the McGlellanes and the Johnstones, by individuals such as John Herys of Maby and George Murray, brother of the laird of Cookpool, and by important barons such as Douglas of Drumlanrig, Stewart of Garleis and Gordon of Lochinver (iii). Groups such as these, not bound together solely by the bonds of kinship, were more analogous to the Highland 'clan' than the other border 'surnames'; some of them were in fact known as 'clans' and their members were described as 'clannit men'. In 1561 Johnstone of that Ilk was described as "ane greit man havand ane clan of the cuntre at his command"; and in 1579 those depending on him were known as Clan Johnstone (iv). Walter Scott of Tushielaw, linked to the Scotts of Branholme, was described in 1579 as a "clannit man" (v). These clans were really confederations of men looking

(i) This is obviously similar to the obligations owed by a feudal vassal to his lord (cf. F.L.Ganshof, Feudalism, pp.77-8) but here they are not necessarily rendered in exchange for a fief or a grant of land; cf. Bartholomew, p.44.

(ii) Fraser, Annandale, i, p.34.

(iii) Caerlaverock, ii, pp.456-70.

(iv) R.P.C.S., i, p.170; Fraser, Annandale, i, p.37.

(v) R.P.C.S., iii, p.87.

to a single lord or leader, who, drawing his power from both the kinship and the feudal relationship, was of considerable political importance in the area. As groups they were not always cohesive, for the peripheral membership could vary; yet they were powerful social organisms and their existence was often a serious obstruction to the central authorities in their struggle to impose law and order in the border region.

The social structure of the border country was therefore a complex one in which three different types of social organisation existed side by side. Yet common to all three was the idea of a leader or lord who had the social obligation of providing for his kinsmen, dependents, tenants and followers; in return for their obedience and support the leader had to defend them from their enemies, military and legal, and had to provide sustenance for them either by giving them land or by maintaining them in his own household. To fulfil these social obligations the leader had to be efficient, and his leadership had to be continuous: for this reason, in the feudal forms of society the provision of effective wardship over the lands of a minor was as important to the subordinate tenants as it was to the King as feudal superior; and in kinship groups leadership could not always descend from father to eldest son when this son was under age or otherwise incapable of fulfilling his physical obligations. The members of the upper rank of this complex society, whether landlords, clan chiefs or leaders of surnames, had important social obligations to perform, and the performance of these bound the lower ranks very closely to them.

But because of its complexity this social structure promoted disorder and turbulence in the border area. There was for many individuals in the lower social level a fundamental clash of loyalties between the claims

of kindred leader and landlord - except in the instances where these happened to coincide. More important still was the clash between feudal and kinship ideas of landholding. Members of a surname and a feudal lord often claimed possession of the same land, and although the lord could produce written charter evidence of his right and the clansmen could not, this was not sufficient proof of ownership (i). The fact that clansmen were "comonlie duelland vpoun sindrie mennis landis aganis the guid will of thair landis-lordis" was recognised by the Crown as one of the factors creating the turbulence in this area (ii); for this led to territorial disputes between surname and landlord, and often between surname and surname, disputes which could only be settled by the use of physical force. The changing fortunes of this debate caused some of the parties involved to lose the use of their land, and therefore to lose the normal means of subsistence; the landless men were forced to maintain themselves by robbery and raiding. The social struggle created landlessness, and the landlessness bred lawlessness. This lawlessness, a fundamental issue of the complexity of border society, was accentuated further by the necessity for leaders of surnames to maintain their prestige and ascendancy by martial action and raiding. A sheer love of local power among both clan leaders and landowners created further tension; each leader of a social group felt it incumbent to obtain power, jurisdiction,

(i) R.F.C.S., ii, pp.249-50.

(ii) A.P.S., iii, p.218 o.16; e.g. in 1592 Maxwell complained that certain Grahams had wrongfully and violently possessed lands in Harlaw and Canonby for 25 years (C.B.P., i, 793).

authority, and, having obtained it, to extend it to its limits, thereby coming into conflict with the expanding power units of other local social leaders. Border society was therefore one in which internecine warfare and lawless activities flourished.

The disturbances created by these economic and social factors were often crystallised into feuds. Any harm or injury done to an individual member of a surname or clan brought out the family cohesion of the kindred unit; the entire group conceived a "deidlie feid, nocht of ane in ane, or few in few bot of thame ilk ane and al, quha ar of that familie stock or tribe how ignorant [or innocent] sa evir thay be of the [alleged] iniure" (1). Even an adverse legal judgment might involve a judge in a feud with the family of a delinquent. The existence of blood feud in the border district was thus the natural consequence of the strength of personal and family ties; the feud is one of the social phenomena of the region. The origin of many of the feuds was, however, basically economic and social; they arose from the clash over the occupation of land between surname and landlord, and surname and surname, already described. The struggle for the possession of land led to the effusion of blood, mutilation and perhaps death of the participants; and the death of an individual produced all the consequences of a blood vendetta. These feuds were almost irreconcilable by the ordinary processes of law.

But not all feuds were of this character. Those most dangerous to the political peace of the country were fought out between those social groups built up by the amalgamation of feudal and kinship influences.

(1) Leslie, 1, p.101.

On the Middle March the Kers of Cesford were, throughout the 16th century, almost continuously at feud with the Scotts of Brankholme; and the West March, towards the end of the same century, was the scene of bloody encounters between the Maxwells and the Johnstones. These feuds were really struggles for local political power between the two most powerful families in any area, and sometimes reflected political faction squabbles at the centre of government. They had no origin other than the desire of the parties to dominate the region completely; accordingly they were continuous, and the success of any attempt to assuage the fury of the struggle could only be a limited one (1).

Border society was turbulent by nature; and although this survey has dealt only with examples drawn from the Scottish side of the frontier, it must not be imagined that border society on the English side differed markedly from the picture drawn. In the English north the country was almost as isolated, and communication as difficult, as in the Scottish south, and a similar pastoral economy existed; the temper of the people was similar, nor did their social organisation differ materially - surname, clan and feudal landowner existed side by side. The whole border area was a single economic and social unit, and, since the boundary line which divided the region was more or less arbitrarily drawn, and certainly difficult to control, involuntary violation of the frontier was frequent and natural. In fact, on both sides of the political frontier, the international division had meaning only for those in very close contact with their respective central governments in Edinburgh or London.

(1) See Chap. 5, Section 2c, pp.267-75 for the legal methods employed to eliminate feuds.

Both feud and friendship ignored the boundary. An English surname would join a Scottish surname in a feud against either Scots or English. Marriages between Scots and English were frequent; both states legislated continuously to prevent this, but unsuccessfully, as is shown by a long list, made in 1583, of Armstrongs and Irvines who had married English girls (1). 'International' sporting events such as football and horseracing provided more peaceful outlets for rivalry than raids and forays, although sometimes these events degenerated into brawls. In 1599 a six-a-side football match took place at Bewcastle between Scots and English borderers, and in 1592 Bothwell and other Scots rebels were playing football on English territory, presumably in company with Englishmen (ii). International horseracing events sometimes coincided with days of truce; a meeting for the deliverance of bills between wardens of the Middle Marches in 1543 coincided in date with an arranged 'horserunning', and, in 1575, a justice court held by the Regent Morton at Dumfries was attended by Englishmen and followed by horseracing (iii). In this society where national feeling was almost meaningless, many men refused to recognize the suzerainty of the monarch on either side of the frontier and swore allegiance to one or other only when forced to do so, or when they found it convenient. For example, in 1565, the Elliots, getting the worse of a feud with the Armstrongs, made an offer to the English warden Scrope, not only for all of their surname to become 'English', but also to deliver Hermitage castle into his hands; Scrope refused this offer, the countries being at peace.

(1) C.B.F., 1, p.121.

(ii) ib., 1, 783; ib., 11, 1066.

(iii) Hy. VIII, xviii, 1, 567, 580; James Sext, p.158.

Englishmen also swore allegiance to the Scots government; in 1564 Terreglin petitioned the Scots Privy Council for permission to admit certain English Grahams as Scotsmen, and in 1563, one Francis Graham, an Englishman, was stated to have married a Scottish girl and to have taken an oath to the Scottish king (1).

The fact that many borderers regarded the frontier as virtually non-existent created a situation of extreme delicacy for the national governments on either side; minor quarrels between surnames could rapidly develop into international conflagrations of the greatest magnitude, and in 1389 it was feared that even the wanderings of grazing sheep might well precipitate a frontier incident (11). The political importance of the border region to the Scottish monarchs is thus obvious; it was an area difficult to control, yet one which in the interests of royal international policy had to be kept under control.

2. The Units of Ordinary Local Administration.

Perhaps more than any other district in Scotland, the border country required effective local administration. Naturally enough, the ordinary apparatus of Scottish administration operated in the borders as in the rest of Scotland. As medieval administration in Scotland was largely concerned with the maintenance of law and order, the basic local administrative units were identical with the local judicial units. These were three in number - the sheriffdom, the private franchise and the burgh; each of them exercised a judicial and administrative authority in theory delegated

(1) C.S.P.(For.), 1564-65, 1124; R.P.C.S., 1, p.301; C.B.P., 1, p.126.
(11) Hamilton, 1, pp.81-2; Bain, iv, 392.

by the crown, the feudal centre of all authority (i). During the 16th century all these units operated within the Scottish border country, and their efficiency in maintaining law and order in this notoriously turbulent area must be assessed.

a. The Sheriffdoms

The sheriffdom was the basic judicial and administrative unit in the localities of medieval Scotland; created by the strong, centralised feudal power of monarchs like David I and his successors, they enabled the Crown to maintain a firm control over all areas. In the sheriffs, the officials who administered these units, the Crown possessed efficient executors of royal commands in many spheres - legal, military, administrative and financial. In his judicial capacity the sheriff possessed both civil and criminal jurisdiction, although the four pleas of the Crown, murder, rape, arson and robbery, were denied to him; and he was responsible for the supervision of the inferior courts within his sheriffdom. As a military officer he was responsible for war preparations, and for mustering at wapinschaws the men liable for military service within his shire. As a royal administrative official he had to execute all royal briefs sent to him, maintain order by pursuing rebels and other disturbers of the peace, to attend parliaments on some occasions and to enforce the legislation enacted there, and in general to perform a multitude of small but important tasks. In the financial sphere he had to collect and account for at the Exchequer the ordinary royal revenue from Crown lands, feudal dues and profits of justice; and he was also responsible for the collection of taxation authorised by parliament (ii).

(i) Dickinson, 'Administration', pp.338, 341-2.
(ii) Dickinson, Life, pp. xxxi-xxxii, xxxviii-xlvii.

The sheriff was a royal official; and the sheriff's court was the King's court in the locality, to which repaired the barons of that area. But the area of jurisdiction of the sheriff was not co-extensive with his shire. Lords of Regality and their tenants were not under the sheriff's control, nor were the burgesses of royal burghs; and individuals or families at feud with the sheriff could obtain exemption from his authority (i). But in spite of these limitations, the sheriffs were the most powerful and most effective local agents of the Crown. The efficiency of these officials, however, depended ultimately on effective royal control; and the Crown, weakened by continuous war with England, frequent minorities and the prevalence of faction rule, could scarcely assert any adequate authority on the outskirts of the realm. Sheriffs, freed from any energetic supervision, tended to carry out their duties in a slipshod manner; and the office, with or without royal approval, became an hereditary one, passing from father to son regardless of the personal ability of those who were to exercise such extensive powers for the King.

By the 16th century all the units of royal administration in the border area had passed under the hereditary control of powerful local barons. In the west, the stewardships of Annandale and Kirkcudbright were hereditary in the family of Lord Maxwell (ii) and the office of sheriff of Dumfries in the family of Crichton of Sanquhar (iii). In the central borders, the sheriffship of Roxburgh was hereditary in the family of Douglas of Cavers, of Selkirk in the family of Murray of Falaheill, and that of Peebles in the family of Hay of Yester. The sheriffdom of Berwick in the east seems at first glance to present

(i) ib., p.xxvii

(ii) R.M.S., ii, 3851; ib., iii, 391. The Stewart was originally an officer appointed by the king to administer Crown lands; the judicial powers, etc., were identical with those of the sheriff.

(iii) A list of the holders of this and the other border sheriffships during the 16th century will be found in Appendix 1.

a different picture, as the list of holders of the office in this shire shows the names of several families; yet here too the office was hereditary, for the office, being forfeited to the crown by various individuals along with their other hereditary possessions, was regranted to others hereditably.

Without exception these ordinary royal offices on the borders were controlled by local barons and lords who held a powerful hereditary grasp on them; and in spite of the Act of the Parliament of 1455 forbidding such hereditary offices (1) no attempt was made at any time by the Crown to displace these sheriffs merely because they held their position by right of birth. Apart from the process of forfeiture, only one attempt was made in the border counties during the 16th century to remove an hereditary sheriff; this was in 1530, when, because of negligence in allowing some border thieves to escape from his custody after a judicial raid, John Lord Hay of Yester was deprived of his hereditary office and it was granted heritably to Malcolm Lord Fleming, the Chamberlain, a favourite of James V (11). Yester, as was to be expected, disputed the gift of the office, and brought an action before the Lords of Session almost immediately which dragged on for a considerable time, often being "put to delay at the kingis command". Yester was partially successful, for Fleming's hereditary tenure of the office was reduced in 1539 to one "pro toto tempore vite sue". But it was not until April 1543, after the death of James V, that Yester was able to get Fleming's claim annulled completely, by a declaration that "..... thar is

(1) A.P.S., II, p.43.

(11) R.S.S., II, 768; Wigton Charter Chest, 457; Yester Writs, 462, 465.

na law fund quhy he sold tyne his heretable office for sic and falt
howbeit he had bene convict tharof" (i). The exercise of the office
scarcely seems to have been affected by the dispute; ordinary payments
were made fairly regularly to the Treasurer, and the sheriff was commanded
to hold the ordinary wapinschaws (ii). It is not clear to what extent
James V was attempting to break the hereditary tenure of the sheriffship
for the sake of greater royal control or greater administrative efficiency,
although part of Fleming's case was that the action would be an example to
other negligent sheriffs (iii); the king, in replacing one hereditary
sheriff by another may have been moved by political or personal reasons.
The legal grounds given for Yester's restoration to the office do, however,
show how firmly the hereditary conception of the office was implanted in
the minds of those responsible for the administrative system of the time.

Heritable sheriffships could descend to a woman or a minor,
neither of whom could exercise the office in an efficient manner (iv).
There are no examples in the border shires of descent to a woman in the
16th century, but there are a few of descent to a minor. A 'sherif wardir'
was appointed to the office, generally the same person who was the minor's
tutor in his other affairs. Minian Crichton of Bellibocht, tutor to both
Robert, 4th Lord Crichton, and William, 5th Lord Crichton, acted as sheriff
warder of Dumfries for both (v); and William Crichton, uncle and tutor
of Robert, 8th Lord Crichton, acted regularly as sheriff of Dumfries between

(i) A.D.C., pp.356, 387, 407, 425, 451, 525; Yester Writs, 473-609
(passim); R.S.S., ii, 3392; Wigton Charter Chest, 517.

(ii) T.A., vi, passim; ib., vii, p.467. It would be interesting to
know which of the two claimants carried out these duties.

(iii) Yester Writs, 507.

(iv) Dickinson, Fife, pp. xxxvi-xxxvii.

(v) R.S.S., i, 3104; A.D.C., p.412; Dumfries Sheriff Court, 1537-8, p.92

1574 and 1583 (i). Thus not even the inability of an heir to perform the duties of his office adequately, broke the hereditary succession; they were performed on his behalf by someone acting in his name.

The hereditary nature of the office, and the fact that many of the more aristocratic sheriffs performed other administrative functions on behalf of the Crown, meant that often the burden of their shrieval duties was laid upon deputy officials; the sheriff-principal in fact often was a mere figurehead presiding each year perhaps at only one of the courts held within the bounds of his office (ii). These deputies were created by the sheriffs themselves, who were responsible to the Crown for the actions of their subordinates; and these deputy officials were given full power to deal with everything that could be done by the sheriff himself (iii). In 1506, the deputies appointed by the sheriff of Berwickshire were given full power to receive all briefes directed to the sheriff of that sheriffdom, with power to decide on such briefes (iv). And in addition to acting on such briefes, deputies normally dealt with the local administrative and legal problems in the shire (v). They could hold courts in the absence of the sheriff-principal (vi) and were summoned to appear at the Exchequer on various pretexts (vii), even to render the accounts of the sheriffdom in place of their superior (viii). The sheriff's deputy, in fact, often took upon

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- (i) R.P.C.S., ii, pp.357-8; ib., iii, p.212; Dumfries Sheriff Court, 1577-83 (passim)
- (ii) Dickinson, Fife, p.xx1.
- (iii) Dickinson, Fife, pp.liv-lvi.
- (iv) H.Mss.C.R., xii, 8, pp.90-91.
- (v) H.Mss.C.R., xiv, 3, pp.84, 90; ib., Milne Home, pp.55, 60.
- (vi) H.Mss.C.R., Var.Coll.v., p.15; ib., xiv, 3, p.84; Dumfries Sheriff Court, 1577-83.
- (vii) T.A., vi, p.348; Ex.R., xxii, p.582.
- (viii) Ex.R., xx, p.506.

himself the whole burden of the office, either voluntarily or through force of circumstances; Patrick, 3rd Earl Bothwell, sheriff of Berwickshire, explained in 1540 that he had so often been in ward "that he never exersit the offices of schereffschip him self" - everything was done by his deputies (i). When in 1591 a private commission of justiciary granted to Douglas of Drumlanrig threatened to diminish dangerously the jurisdiction of the sheriff of Dumfries, it was the sheriff-depute, not the sheriff himself, who complained most vociferously (ii). So strong was this tendency that on two occasions at least men who held the deputy office in Berwickshire were designated 'sheriff' by officials of the Exchequer (iii).

The attention paid to routine duties by a deputy sheriff is well shown by the record kept by Andrew Cunningham while he was deputy sheriff of Dumfries (iv). William Orichton, tutor of Sanquhar, was sheriff principal of Dumfries, and the routine business of the sheriffdom was executed by three deputies, of whom Andrew Cunningham was the senior, assisted by four sheriff officers and three clerks (v). The record was kept, by a clerk, of actions and matters dealt with by Cunningham, and it is probable that the other deputies kept a similar record. The majority of the entries relate to the period between the years 1577 and 1583, and they

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- (i) A.D.C., p.502
(ii) R.F.C.S., iv, pp.614, 624, 696, 735.
(iii) Ex.R., xx, p.505; R.F.C.S., v, p.211.
(iv) Published as 'Sheriff Court Book of Dumfries, (1578-1583)', in D. & G. Trans., 3rd series, xii. This document, however, was not the Court Book of the shire court proper as, although references were made to actions in that court, these actions are not recorded in it. (Entries 37, 41, 64). It is rather a record of the day to day activities of one of the deputy sheriffs of the shire.
(v) ib., p.157.

show the deputy-sheriff to have been active continuously; he was available on almost any day of the week (i) and regularly dealt with a large amount of routine shrieval business. Brieves were registered and executed (ii), hornings were put into force (iii) and relaxed (iv) and letters of four forms executed (v). The sheriff officers arrested (vi) and poinded various goods (vii); and measures were taken to enforce payment of taxation (viii) and the superplus of thirds of benefice (ix), even when this involved putting the sheriff-principal himself to the horn (x). The deputy sheriff examined the claims of both parties in the actions of removing brought before him, and could make decisions upon that evidence (xi); in the more difficult cases concerning land, however, he would continue the

- (i) The favourite day for business was Monday, and there are signs of regular weekly transactions on that day, e.g. the following sequences of entries: 3 March, 10 March, 17 March 1578; (Entries 85, 66, 10) 24 April, 1 May, 8 May, 16 May 1581; (159, 143, 160-1, 162) 5 March, 12 March, 19 March 1582 (196, 204, 205). But every other day of the week including Sunday is represented by dated entries, and it cannot be asserted that Monday was a day set aside for the transaction of even one type of business.
- (ii) Entries 163, 246, 247, 254.
- (iii) Entries 155, 225, 237.
- (iv) Entries 176, 180, 186, 230, 256.
- (v) 102, 177. These were writs on which creditors proceeded against debtors, four separate charges being made to the debtor to perform his obligation; later they were displaced by ordinary letters of horning.
- (vi) 98, 99, 109, 167.
- (vii) 51, 244. Arrestment was the confiscation of a debtor's goods in the possession of another person; poinding referred to goods in his own possession.
- (viii) 202
- (ix) 76.
- (x) 224.
- (xi) 30, 34, 36. Actions of Removing were brought by the owner of certain lands to remove a tenant or other person dwelling on it, forty days' notice having been given to the person to be removed. Both parties would produce evidence in support of ownership or occupation rights. If the action was successful, the sheriff issued a precept of ejection.

action to the sheriff court proper, where it would be heard before the sheriff-principal and a larger number of suitors (i). The most frequent type of entry recorded financial transactions where one person bound himself to pay to another either a sum of money or certain specified goods (ii); many of these were probably the outcome of actions for debt (iii). All these were routine functions of the sheriff and his subordinates; and the regularity with which they were performed, as reflected by the entries in this document, indicates a reasonable degree of efficiency on the part of this sheriff-depute of Dumfries.

Accordingly the fact that the sheriffship was an hereditary office did not necessarily diminish the effectiveness of its execution; the bulk of the routine work was carried out by the deputies, many of whom were obviously hardworking and efficient, with administrative experience in the office over considerable periods of time (iv). In fact, in the border sheriffdoms the ordinary functions of the office appear to have been carried out quite adequately either by the sheriff himself or his deputies. Except for the holding of wapinschaws (v), there is little evidence of the sheriffs carrying out any military duties; but these, in the border shires, had been handed over to other more specialised

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- (i) 37, 41, 64.
(ii) 70, 89, 95, 103, 145, etc.
(iii) 68, 67, 86. One interesting entry records an agreement to pay a large debt over a number of years on an installment system (219).
(iv) William Vache of Kingside was deputy of Peeblesshire in 1557 and 1561 (H.Mss.C.R., Var.Coll.v, p.15) and William Murray of Romannoss from 1574 to 1580 (R.P.C.S., ii, p.343; Ex.R., xx, p.505; ib., xxi, p.114). Thomas Kirkpatrick of Closeburn was deputy of Dumfriesshire from 1591 to 1596. (R.P.C.S., iv, pp.814, 824, 696, 735; ib., v, pp. 74, 232, 338.) Adam Cockburn of Langton was deputy in Berwickshire from 1591 to 1600 (H.Mss.C.R., Milne Home, p.55; R.P.C.S., vi, p.68).
(v) e.g. T.A., vi, pp.109, 382; ib., viii, pp.73, 140; ib., x, p.242.

officials (i). Owing to the loss of most of the sheriff court records, there is little direct evidence of the execution of the sheriffs' judicial duties; but those fragments which do remain indicate fairly regular sessions of these courts and, as far as can be judged, the dispensation of good justice (ii). In the administrative sphere proclamations were made, briefes and hornings executed, and sasine of land given (iii); and orders were given to border sheriffs and their deputies both by Act of Parliament and royal precept to do many things ^{to} -/control commerce within their sheriffdoms, to pursue thieves and vagabonds, and to compile inventories of the escheat goods of rebels (iv). The sheriffs of the border shires, or their deputies, appeared at the Exchequer with their accounts and paid in various sums of money to the Comptroller and the Treasurer - but only at irregular intervals (v); equally often they were absent, and were fined or put to the horn for their failure to appear and make their accounts (vi). Some sheriff's tried to be efficient tax-collectors; they encouraged the Crown to escheat the goods of those who had failed to pay their contributions, and Hay of Yester even over-assessed certain landowners

- (i) The sheriff of Roxburgh was commanded to raise the men of his shire against English invasion on 19 Nov. 1544. This was because Ker of Cesford, the Warden of the Middle March, who normally would have done this, had been removed from office the previous month for treasonable communication with the English. The government apparently did not know at this time that the sheriff too had subscribed assurances and given pledges to England. (Hamilton, ii, pp.503, 509; Fraser, Scotts of Buccleuch, ii, p.182; Hy.VIII, xix, 2, 503).
- (ii) The published fragment of the Dumfries Sheriff Court Book, 1537-38, shows eight meetings of the court in nine months.
- (iii) for sasines see the sheriff's responds in Ex.R.
- (iv) A.D.C., pp. 271, 329; R.P.C.S., iv, pp.798, 800-1.
- (v) e.g. Ex.R., xvi, pp.387-8: ib., xxii, pp.105, 179, 289, 379; T.A., vii, pp.66, 233, 365.
- (vi) e.g. T.A., v, p.445; Ex.R., xx, pp.502, 503, 579; ib., xxiii, p.512.

of Peeblesshire (i). But generally the central financial officials had difficulty in obtaining from the sheriffs the money collected for these special taxations (ii). Those responsible for executing the office of sheriff on the borders carried out their duties in an adequate manner, although by no stretch of the imagination can they be called highly efficient, especially where collection of taxation was concerned; but they were no less efficient than the majority of the sheriffs holding office elsewhere in Scotland, most of whom were equally remiss in their dealings with the Exchequer.

Yet there was some abuse of office. The position they held enabled many sheriffs and their deputies to use their power for their own advantage, or to keep their many kinsfolk, tenants or friends free from the consequences of any illegal action they might have committed. In 1566 the sheriff of Dumfries refused to apprehend some men of his own surname who, although they had been at the horn for over two years, yet, unrelaxed, rode "dalis in company" with him (iii); a later sheriff of the same shire used his position and power to have executed the retainer of a man with whom he was at feud (iv). The sheriff of Roxburgh in 1599 violently siezed certain men, probably his kinsmen, who had been apprehended as rebels, and refused to re-enter them to justice (v); and the following year he tried, unsuccessfully, to use an unauthorised declaration of horning to exculpate the murder of men with whom he was at feud (vi).

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- (i) R.S.S., iv, 2711; R.P.C.S., vi, pp.333-4.
(ii) R.P.C.S., iv, p.561; ib., v, p.211; ib., vi, p.23; R.S.S., iv, 2729, 3036.
(iii) R.P.C.S., i, p.465.
(iv) ib., v, pp.339-40.
(v) ib., vi, p.4
(vi) Pitcairn, ii, pp.370-7.

It seems to have been a habit of sheriffs and their clerks to fail to register or execute letters of horning against their friends (i); and their failure to execute certain briefes was often accompanied by weak excuses - the sheriff of Roxburghshire was "sua corporient as he mycht nocht travell" (ii).

Although on the whole the border sheriffs and their deputies carried out their duties as well as any other of these officials in Scotland, it cannot be denied that in cases in which they themselves were an interested party - and these might have been numerous, depending on the numbers of their kinsfolk, tenants and friends - they acted with partiality; their actions as officials were often coloured by the obligations of their social status as landlord or head of a kinship group. They were, it is true, royal officials; but holding their office by hereditary right, they were scarcely answerable for it to the Crown. The Crown, in fact, took little heed of the abuses perpetrated by these officials, or even the non-execution of routine matters, until 1599, when certain border sheriffs were summoned before the Council as "altogeddir cairles and unmyndful of the dewtifull discharge of thair offices" (iii); and although the King intended "to establis and sett down some gude remedeis and actis", the process appears to have had no practical effect. The central government had no real control over the exercise of the office of sheriff at this time.

(i) R.F.C.S., vi, pp.203, 243.

(ii) ib., iv, p.63.

(iii) ib., vi, pp.56-9. It is probable that some of the complaints of shrieval misconduct were somewhat exaggerated.

b. The Private Jurisdictional Units.

The units of private jurisdiction were of considerable importance within the general framework of the administrative system of medieval Scotland. The idea of the possession by an individual of judicial rights was one which had become an inherent conception of European feudal society (i); for each feudal lord required a curia or court to be attended by his vassals where the strictly feudal matters of land tenure and social relationships were discussed, and disputes arising from these were settled. Gradually there were superimposed on this simple framework of feudal justice more important and more complex judicial powers; these extraordinary powers were conferred on powerful individuals by the Crown, the feudal centre of authority, and in legal theory, if not always in practice, the exercise of franchisal jurisdiction was dependent entirely on royal grant.

In Scotland grants of private judicial powers had been a regular feature since feudal ideas, feudal military organisation and feudal social habits had been adopted almost wholesale in the reigns of Alexander I and David I (ii); and these powers gradually came to be classified, during the 14th century, into a higher and a lower form - grants 'in regalitate' and grants 'in baronia'. During this century the gradual diminution of royal power and the partial dislocation of the royal judicial organisation had produced a situation where effective power had passed from the Crown to individual lords in the localities; and it seems likely that recognition of this fact, and the desire to legalise this situation led to such a legal definition at this time (iii). But although the definition and extension

(i) Ganshof, Feudalism, p.143

(ii) Dickinson, Carnwath, pp.iii-xiii.

(iii) Duncan, Dunfermline, p.11.

of these forms of private jurisdiction arose from a situation of weakness for the Crown, there is no need to assume that they accentuated that weakness; provided that full and proper emphasis was placed on the royal source of the powers exercised, and provided that efficient and equitable use was made of these powers, private jurisdictions, especially in the higher form, could have been effective means of maintaining law and order in the localities on behalf of the Crown (i), even in the turbulent border area.

The most complete form of private jurisdiction was that conferred by a grant in regality. The possessor of such a grant, a lord of regality, had exclusive rights of justice over all people living within the area over which his power extended. This jurisdiction related to criminal as well as civil matters; and as well as lesser crimes such as theft and breach of the peace, a lord of regality might be competent to hear the four pleas of the Crown, murder, rape, arson and robbery (ii). Only treason was outwith the competence of the regality court. Attached to this omni-competent jurisdiction was the right of repledging; should any person within his jurisdiction be summoned before another court, whether that of another lord, a sheriff or even a royal justiciar, the lord of the regality could claim jurisdiction over him and demand the right to try him in his own court. The sheriff or justiciar could demand the authority on

(i) Dickinson, Carnwath, p.cxi

(ii) The Regality of Annandale was granted 'cum quatuor loquelis corone nostre'. (R.M.S., i, App.1.34.) That of Kelso was granted 'cum loquelis nostre'; but this did not necessarily include the four royal pleas as the grant to Melrose couched in similar terms expressly excluded 'quatuor punctis precipuis ad coronam nostrum spectantibus'. (R.M.S., i, 817; A.P.S., i, p.523, No.20). Regalian jurisdiction did not always include these pleas.

which this claim was based, and, this being produced, the offender was released; a pledge was given that justice would be done in the court of the regality, and the pursuer was assigned by the lord or his representative a specific day on which to pursue his case there (i). This right was frequently exercised in the 16th century. As late as 1601 William, Earl of Angus, repledged to his regality court of Jedburghforest some tenants implicated in a criminal case held before the central courts at Edinburgh. An attempt at the same time to repledge the main offender, Andrew Kerr of Fernihurst, on the grounds that Fernihurst was within that regality, failed although witnesses proved this point. The Crown refused to allow Kerr to be repledged and Angus was eventually forced to withdraw his claim (ii).

Such extensive powers required a large administrative organisation if they were to be exercised effectively. Accordingly the grant of regalian powers included authority to build up an administrative system, a system often based on that of the King; in 1587 Thirlestane regality was erected 'cum libera cancellaria et capella, et cum plena justiciaria'. The nucleus was a central secretarial office from which the lord's briefs were issued to the justiciars, bailies, sergeants and other officials, who were to execute them (iii); and, if the regality was

(i) Reg.Maj., pp.289, 317.

(ii) Pitcairn, ii, pp.379-80. Royal control of private jurisdictions often took the form of limiting this right of replegation; in 1490 it was declared that the ecclesiastical lord of the regality of Glasgow could not repledge the inhabitants of the incorporated baronies of Anorum, Ashkirk and Lilliesleaf, but was merely entitled to the profits of the jurisdiction exercised by royal officials. 'Quum aliquis eorum tenantium dictarum baroniarum pro suis demeritis et criminibus convictus vel justificatus fuerit in regis itineribus justiciarie, curiis gardianorum seu aliis, predicti episcopi (of Glasgow) ... eschaetas, deyoris, et proficiis eorum bonorum gauderent'. (R.M.S., ii, 1915)

(iii) R.M.S., v, 1036.

extensive, the lord could set up the itinerant machinery of the justice ayre which, for example, Jedburghforest possessed in 1601 (1).

These were positive aspects of the power of the lord of a regality; there was also an important negative one - the right to exclude from his lands any royal official and to prevent him from carrying out his ordinary duties within the area of the lord's jurisdiction. Sheriffs, justiciars, bailies and a host of lesser royal administrators were unable to act on behalf of the King within a regality. This was a natural corollary of the positive powers of the lord: his jurisdiction in almost all points was equal to that of the King, and he possessed his own administrative staff to exercise it, who alone were the proper officials within the regality; royal commands affecting the regality were carried out by them under the instructions of their lord and not by the servants of the Crown. Only the commands of its lord were effective in the regality.

The jurisdiction conferred by these grants was exercised over certain areas of land by an administrative organisation similar to that of the Crown; the land itself thus came to be known as the Regality. But in theory there was a fundamental distinction between the lands and regality; regality was the power of jurisdiction, not the lands themselves. This theory is sometimes reflected in the practice of the 15th and 16th centuries. When the regality of Thirlestane was created in 1587 the various lands, including the barony of Blyth which John Maitland already possessed, were first made into a new barony, the barony of Thirlestane; this barony was then regranted to him 'in liberam regalitatem'; Maitland

(1) Pitcairn, ii, p.381.

was given authority to exercise the powers implied by this phrase within this barony, and the various lands over which it was exercised were part of the barony, not the regality, of Thirlestane (i). The prior existence of a barony or baronies seems to have been essential, and a Regality was in fact a barony over which the greater regalian powers were exercised. The regality in this sense is the power, not the lands; and the possession by an individual of regality was possession of regalian rights to be exercised by him over his lands. The power belonged to the person and was not attached to the lands; it depended on the possessor of the lands, whether regalian jurisdiction was exercised over them or not, and accordingly regality, in a non-physical sense, was not necessarily a permanent entity. In 1440 James Douglas was granted the barony of Morton, and was to hold 'dictam baroniam in regalitate pro toto tempore vite ejus et post ejus mortem heredes eandem haberent sed tantum in liberam baroniam' (ii); the barony but not the power of regality was to descend to his heirs, and when the barony descended to Douglas's son in 1470 there was no mention of regality or regalian rights (iii). The power granted was essentially personal, and although it could be heritable power, the above example shows it was not bound to pass from father to son. Only when they were in the hands of the Church did regalities have a more impersonal and permanent character.

Lands held in regality could be forfeited to the Crown, and the regalian rights over them were forfeited at the same time. The lands

(i) R.M.S., v, 1306; ib., 1659 shows the grant of lands within the barony of Thirlestane after regalian jurisdiction had been granted.

(ii) ib., ii, 224.

(iii) ib., ii, 993.

reverted to the status of a barony; when they were regranted either to the former owner or to someone else, there was no compulsion on the Crown to regrant the regalian rights with them (i). This fact confirms the personal and temporary nature of grants in regality. The possession of regality was therefore possession - perhaps only temporary - by an individual of authority to exercise certain rights over a certain area of land.

It has been contended (ii) that "the lord who held regality powers held them over all his lands whether such a grant was specified in his new charters or not"; and as a corollary to this, that an individual could possess only one regality. This is a logical conclusion from the reasoning attributed to the lawyers of the 15th and 16th centuries who distinguished power from land, emphasised its nature as a grant and magnified its personal and temporary nature in the hope of accentuating the position of the Crown as the centre of all justice. But in spite of this, in the minds of the people of the time the jurisdiction was linked to the land; to them Regality was a physical entity, an area of land with boundaries, and there was no reason why one man should not possess a number of them - even the royal clerks believed that the Earls of Angus possessed

(i) The histories of Bunkle and Jedburghforest, given in App.2 shows this admirably. Bunkle, held in regality by Archibald, Earl of Angus, was, while in the possession of the Crown in 1528 after his forfeiture, designated a barony (R.M.S., iii, 647) and it was as a barony that it was granted to James Stewart in 1534 (*ib.*, iii, 1425); even on its restoration to Angus in 1547 there was no mention of regalian rights, nor was there until 1559 (*ib.* iv, 146; *Ex.R.*, xix, p.441). In 1594 Bunkle was granted as a barony to Lennox on the forfeiture of William, Earl of Angus, with no mention of regality; it was restored in 1602 'cum regalitate ejusdem'. (R.M.S., vi, 192, 1283). Jedburghforest passed through a very similar phase.

(ii) by A.A.M.Duncan in Dunfermline, pp.31-2.

simultaneously the regalities of Kirriemuir, Abernethy, Jedburghforest and Bunkle.

The lesser form of private jurisdiction was conferred by grants 'in liberam baroniam'. This jurisdiction was exercised only over the lands specified in the charter, the barony (i), and only from a legal centre or caput within the barony where courts were held. The baron was therefore responsible for the execution of certain aspects of public justice within his barony. He possessed both criminal and civil jurisdiction; but his competence to deal with criminals was limited to those cases of theft and slaughter where the offender was caught red-handed or with the stolen goods in his possession (ii). But in addition a baron could be granted a commission of justiciary within his barony which gave him higher criminal jurisdiction; John Gordon was given such a commission to be exercised in his barony of Stitchill in 1562 and the priors of Coldingham in 1518 were granted a commission to be exercised in the barony of Coldingham to justify thieves and "pikeris" (iii). The civil business of his court included actions for debt, possessory actions within the barony, and certain quasi-criminal actions such as breach of arrestment, bloodwite and deforcement (iv). The exercise of this jurisdiction gave to the baron the right to levy fines and amercements, and to distrain and escheat property; this was an important source of baronial income.

(i) Dickinson, Carnwath, pp.xx, xxi.

(ii) ib., p.cvil.

(iii) Ex.R., xix, p.496; ib., xiv, p.617.

(iv) Carnwath, p.civ. In quasi-criminal actions the judgment was a doom pronounced by the dempster. Actions of breach of arrestment concerned interference with lands, articles or people declared within the baron's 'peace'; those of bloodwite concerned the shedding of blood, for which a fine was payable to the baron; those of deforcement concerned the obstruction of any baronial official in the execution of his duty.

In theory the exercise of baronial jurisdiction was under the supervision of the sheriffs of the shire within which the barony lay (i). It seems doubtful, however, how effective this supervision was during the 16th century when it was no longer possible for a sheriff to attend personally all the baron courts within his shire; the sheriff of Roxburgh, for example, would have had to attend the courts of at least 44 baronies. There was a close link between each baron and the sheriff of his shire; for each barony owed suit to the sheriff's court (ii) and, although generally this was done for the barony by an attorney, the baron often had to be present in person (iii). It was certainly possible for the sheriff to direct a baron to review cases within his baronial jurisdiction, but there could be no direct interference by the sheriff in the working of the baron court; the sheriff could not himself act within the barony on a matter within the judicial competence of the baron. Any attempt by the sheriff to deal with such a matter in his own court enabled the baron to exercise his right of repledging (iv). Only when jurisdiction higher than that

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- (i) In the 13th century sheriffs were to attend baron courts 'ad videndum quomodo euria tractetur' (Reg.Maj., p.282.).
- (ii) In the time of Robert I the barony of Liddesdale owed suit to Roxburgh sheriff court; when the baronies of Grubet and Fernihurst were erected in 1540 and 1542, both owed suit to the same court (R.M.S., 1, App.1.53; ib., 111, 2142; R.S.S., 11, 4486.).
- (iii) This was when both "suit and presence" were demanded by the terms of his charter; Prof.Dickinson has suggested that, at head courts, suit and presence was the normal form of court service during the 16th century (Fife, pp.lxxx-lxxxi).
- (iv) In 1537, when Thomas Mulligan pursued a complaint in Dumfries sheriff court against John Maclune, a tenant of the Earl of Glencarne, Oswald Cunningham, the Earl's suitor at the sheriff court, gave surety to Mulligan "yat justice salbe minsterit to him in ye barone court of glencarne and yat upon tiiisday ye nynt day of October nixt tocum" (Dumfries Sheriff Court, 1537-8, p.93). This fulfils the essentials for lawful replegiation; ~~that~~ the baren's representative was present, a pledge was given, and the pursuer was allotted a definite date to pursue his case in the private court.

enjoyed by the baron was involved could the sheriff act on behalf of the Crown within the barony; he could for example enter the barony to secure the person of a murderer who was to be tried before a royal justiciar or to perform an executive function on a royal writ.

Barony, like Regality, was a grant of jurisdiction, and, legally speaking, was distinct from the lands over which it was exercised; but the more rigid definition of the lands, and the existence of an inalienable caput, gave the barony a greater degree of territorialisation - the jurisdiction was linked with the possession of the caput, and, although lands within the barony could be alienated, they were still part of the unit and subject to the baron's jurisdiction. Both as a geographical and as a judicial unit the barony always retained its identity (i). The barony was therefore more than the regality a definite physical entity, and even in the eyes of the lawyers a single baron could hold two or more (ii).

The delegation of authority to individuals, simple in its inception, rapidly developed certain aspects of complexity. Because a barony was heritable, it could descend to females; because an ambitious family could acquire additional lands, a large number of baronies could be held by one individual; because an ambitious individual could acquire additional powers from the King or his representatives, baronies could be incorporated within a regality. These all created difficulties the solution of which increased the complexity of the Scottish administrative

(i) Dickinson, Carnwath, pp.xxiii, xxxvi. It is however possible that this idea of baronial integrity was a legal fiction; e.g., Rutherford barony was erected from lands within the jurisdiction of the barons of Cavers (see App.1) and the geographical and judicial unity of Cavers barony was violated on this occasion permanently.

(ii) ib., p.xxxvii.

system and ultimately diminished its effectiveness from the point of view of the central government.

The descent of a barony to an heiress was a simple matter; she inherited both land and jurisdiction, and on marriage her husband incorporated both within his own territory and power. When, however, several daughters succeeded to baronial lands, a more complex situation arose; the lands were divided equally among the daughters, the only proviso being that the eldest should possess the caput. Thus in theory the eldest daughter, or rather her husband, although holding only a portion of the land, possessed jurisdiction over the entire barony and as a legal entity the barony did not lose its unity. In practice, however, her jurisdiction might be limited to that part belonging to her alone, especially if her younger sisters had married powerful barons who could prevent the effective exercise of the jurisdiction over the portions now within their power (i). In such circumstances the jurisdiction was diluted, and the barony was no longer completely effective as a local administrative unit.

When two or more baronies were held by one person, each barony retained its identity, its caput and its jurisdiction, unless they were all formally united by royal charter into a single barony - or baronial complex - with a single caput (ii). The latter seems to have been the more

(i) of. ib., pp. xxx-xxxiv. See App. 2 under Blackadder, Haliburton and Lambden for examples of baronies divided between heiresses. Blackadder shows extreme fractionalisation at the end of the 16th century. Haliburton and Lambden were finally reunited in 1624 in the hands of the Earl of Hume, though the Humes had acquired junior portions only at the initial division; the senior portions and therefore the jurisdictions were possessed at first by the Lords Ruthven, and latterly by the Viscounts of Fenton, all absentee holders of the franchise in the 16th century. The final destination of the baronies suggests that the effective jurisdiction over the lands was probably exercised by the junior portioner who had extensive local power.

(ii) ib., p. xxxvii.

common custom in the border shires during the 16th century (i). Within the baronial complex each barony retained its identity, at least nominally; but the jurisdiction of the complex appears to have been centralised, and each barony was merely a sub-unit of the administrative system of the complex as a whole. The bailies and other officials of these sub-units looked for their instructions to the central office of the complex; the sergeants of Snaid barony, for example, received instructions in 1529 from Yester directing them to carry out certain detailed tasks, and to hold a baron court at the court hill of Snaid (ii). Having acted upon them, the local officials would often have the fact formally attested by a public notary, presumably to provide a legal proof to the lord that his commands had been obeyed; in 1549 the bailies of the baronies of Snaid and Crawford-town, having acted on precepts from Yester and Sanquhar respectively, had their actions registered in the protocol book of Herbert Anderson (iii).

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- (i) In 1588 the barony of Roxburgh, erected for William Ker of Cesford, was separate from Cesford's other baronies and had a different caput; (R.M.S., v, 1521). Ormiston barony also had a separate caput (R.M.S., v, 1364) from Cesford's other baronies, Auld Roxburgh and Cesford, which were linked together with a single caput. (ib., iii, 2785). The barony of Linton, owned by the Somervilles of Carnwath, always seems to have retained its separate identity. On the other hand, the caput of Foulden, owned by Ramsay of Dalhousie, was at Dalhousie, and that of Maxwell, owned by Lord Maxwell, at Carlaverock; (R.M.S., v, 1712; ib., iii, 1402). At the end of the century Snaid barony looked to Yester, and Crawford-town barony to Sanquhar (although both had earlier been separate (ib., v, 1830; vi, 1375.) The larger the complex the more likely it was to be centralised; the baronies in the Bothwell complex - Whitsome, Townyetholm, Wilton, Chalmerlan-newton, Dryvesdale, Kirkmichael and Eristown, to name only those in the border shires - regarded Hailes castle as their caput; (R.M.S., ii, 3635) and those within the Hume complex - Dunglass, Easter Upsetlington, Hassendean, Broxfield and Hownum - had their caput at Hume (ib., ii, 3406)

(ii) Yester Writs, 448.

(iii) Anderson Protocol Book, i, 78, 83.

A similar situation arose when a barony was incorporated within a regality; such baronies appear to have lost their identity as independent judicial units. Normally the lands within a barony owed suit to the baron court; the lands within the barony of Bowden, however, owed suit to the court of the Regality of Kelso, within which regality this barony was incorporated (i). The lower jurisdiction of the barony disappeared within the higher jurisdiction of the regality with its more highly developed administrative and judicial machinery. There is no evidence that Bowden retained its own court; it was not necessary, for it was no hardship for the inhabitants to attend the court at Kelso, a few miles away. It was however essential to have local courts for those baronies within a regality whose administrative centre was at a considerable distance, such as Anorum, Lilliesleaf and Ashkirk which were within Glasgow Regality, or Crossmichael barony within Lincoluden Regality; these local courts could be held at the former caput of the barony, or anywhere within it (ii). But they were not baronial courts exercising a baronial jurisdiction; they were courts of the regality held within a local sub-area of the regality where officials of the regality exercised a regalian jurisdiction. The court at Anorum, for example, was regarded as a regality court, not a barony court - being equated 'ad ceteras curias dicte regalitatis' (iii). These baronies absorbed within a regality, therefore, became administrative sub-units of the regality, administered

(i) R.S.S., ii, 3968; R.M.S., iv, 1966, 2440; Ex.R., xxii, p.565.

(ii) Lands within Anorum barony owed court service 'ad tria placita capitalia apud Anorum'; (R.M.S., vi, 65); but those within Crossmichael owed service 'ad trias curias capitales infra dictam baroniam', no specific place being mentioned (R.M.S., v, 42).

(iii) R.M.S., vi, 65).

by bailies subject to the instructions of the regality chancery (1); they lost their individual character, and received their justice either from the court of the regality itself, as in the case of Bowden, or from justices in regality ayre sitting in a local court.

Although these baronies, which were linked with others in a complex or were absorbed into a regality, nominally retained their identity, they seem on the whole to have lost some of their character as local administrative units. Originally the owner of a baronial franchise was a man of the locality exercising his jurisdiction on behalf of the Crown; now the local officer was a subordinate, responsible to the central administrative office of a private individual who, secure in his power, had little personal interest in details of the administration of justice in each locality within his complex. The baron of a large complex could not preside at the courts of his more distant baronies, and was forced to depend on the competence of his bailie. But however efficient and hardworking the bailies might be, they did not have the authority over their territory that a resident baron had. The growth of scattered baronial complexes, centralised but non-royal administrative organisms, must be regarded as symptomatic of the decline of the franchises as effective units of local administration.

These units of private jurisdiction were an important factor in administration throughout Scotland, and their place in the administration of the border country cannot be ignored. In the three

(1) The bailies of Drumsleit and Crossmichael had their actions on precepts of the provost of Lincluden registered by a notary (Anderson Protocol Book, II, entries 18, 82, 87).

sheriffdoms nearest England, Berwickshire, Roxburghshire and Dumfriesshire, there were in existence during the 16th century at least 104 franchisal units - 9 regalities and 95 baronies; the table below shows how these were numerically divided among these shires (1):

	Berwick	Roxburgh	Dumfries
Regalities (a) Ecclesiastical	1	2	1
(b) Lay	2	2	1
Baronies	23	44	28
Baronies			
attached to local regality	0	1	2
attached to local complex	4	5	4
attached to external regality	2	6	3 (ii)
attached to external complex	6	10	3

It is obvious how important they were numerically; the baronial map of two of these shires shows how extensive these franchises were geographically (iii). Many of them covered a large area. The regalities of Melrose, Liddesdale and Thirlestane were extensive - and some of the territory over which their jurisdiction was exercised lay beyond the boundaries of the sheriffdoms covered by the map. The lay baronies of Hume, Brankholme, Cavers and Cockburnspath were large, and also the ecclesiastical baronies of Coldingham, Bowden and Ashkirk. But territorially these franchises were very unequal in size, and at the other end of the scale were very small baronies such as Lambden, Maxton and Makerston. Nor were they necessarily compact units;

- (1) The franchises in Berwickshire and Roxburghshire have been more closely studied; they are listed with details of their owners in App.2.
(ii) This includes the barony of Morton, attached to Dalkeith regality for most of the century; from 1581 to 1589, however, it had a separate existence as a regality.
(iii) Map 2 attempts to show the territory covered by some of the franchises within Berwickshire and Roxburghshire.

some of the lesser baronies may have been small estates within a single boundary, but the majority undoubtedly were scattered, with outlying parcels of land at a considerable distance from the caput (1). The importance of these private jurisdictions is seen in their number and in their extent - the extent of the total area within this region where the power of the local royal officials was limited.

The holders of these franchises, if resident, were men of importance in the border country. Many of them held additional administrative positions in the area - Hume, Maxwell, Ker of Fernihurst and Ker of Cesford as wardens of the marches; Crichton and Douglas of Cavers as sheriffs; Cockburn of Langton, Kirkpatrick of Closeburn and many others as deputy sheriffs; others such as Jardine of Apilgirth were chosen as royal commissioners on certain border matters (11). Men such as Murray of Cockpool, Hume of Ayton, Hume of Coldenknows, Scott of Brankholme, Turnbull of Bedrule and Rutherford of Hunthill were the leaders of local politics, and their actions and opinions were of considerable importance to the central government. These were all men who were capable of using effectively the baronial powers delegated to them by the Crown. But a large number of franchise-holders were men who resided at a distance from the border country. The Earls of Bothwell had many baronies scattered throughout these sheriffdoms which they seldom visited; and other non-resident 'border' barons included the Earl of Huntly, Ramsay of Dalhousie, Menzies of Carlisle, Stewart of Rosyth and Somerville of Carnwath.

(1) It would be a difficult if not an impossible task to reconstruct the exact boundaries of these baronies and no attempt has been made to do this on the map. It is worthy of note, however, that exact boundaries did exist and were known, and formed the subject of litigation (A.D.C., pp.353, 514).

(11) A.D.C., p.107.

The jurisdiction exercised by these men was controlled from a distance; their border baronies were administered as part of a larger unit, and some of them might not even have retained their own courts. Of 95 border baronies examined, 46 (i.e. almost half) must have been administered either from a distance or as part of a larger unit, and, as has already been suggested, such units could not have been so effective in helping to maintain order in this troubled area as locally controlled franchises.

During the 16th century the franchises, both regality and barony, were declining throughout most of Scotland as effective units of local jurisdiction. The growing power of the Crown and the development of a strong central court, the Court of Session, limited the power and jurisdiction of the franchises; and at the same time many of the holders became interested in developing the economic potentialities of their lands, which they regarded as of much more value than the income from the exercise of their jurisdiction (1). These might not have been very potent factors in the border area during this period, when Crown influence was slight and economic development difficult; yet there is evidence here too of a decline in the importance of the barony. The holders of the smaller units, particularly those fractionated units which had descended through co-heiresses, did not have the power to exercise their jurisdiction effectively, while the absent holders of larger and more scattered units did not always have sufficient local interest or knowledge to carry out their judicial functions adequately; in both cases the result was abuse of power and inefficiency. Even in those baronies where the lord was

(1) This is shown by the large numbers of burghs of barony founded during the period.

resident, powerful and interested, justice might not always be effectively administered. For these men were leaders in the area, respected by their kinsmen, friends and tenants, and socially under an obligation to maintain them physically, even to support them in a law court; their attitude towards the dispensation of justice was thus often modified by their social responsibilities. Moreover as leaders of border society, they themselves were often drawn into the feuds which characterised the turbulence of the district; Scott of Braxholme and Ker of Gosford, both holders of extensive franchises, were continuously at feud throughout the 16th century. It is not surprising that the franchise-holders in this area were not always interested in maintaining an effective order.

o. The Burghs

The Burghs of the South of Scotland were created in the twelfth and thirteenth centuries within the framework of a general European economic upsurge; probably their growth in this area was stimulated by the commercial necessity of marketing the wool of the sheep pasturing the southern hills. Sheep were important in this area early in the 12th century; the export of wool may have begun as early as 1130, and in 1150 Flemish wool merchants had settled in the district (i). Burghs such as Dumfries, Berwick, Roxburgh and Peebles were created under royal patronage, while others were founded, with royal permission, under the aegis of other powers - Kelso and Jedburgh by the Church, Locksaben by the Lords of Annandale (ii). But these new towns were founded not only under an economic stimulus; particularly by their royal founders they were regarded

(i) Franklin, pp.66, 77-8.

(ii) Grant, p.123.

equally as a partial solution to certain of their political and administrative problems (i). The early kings of Scotland sought to use the newly-created burghs as local units within the framework of government, as royal centres of control in difficult areas (ii). The inhabitants of the burghs, often merchants of foreign origin, were granted not only commercial advantages but also judicial and administrative powers within the burgh; this latter privilege, since they owed allegiance only to the King, they used on behalf of the Crown. The powers of the burgh courts, and the laws applied within them, dealt entirely with the activities and relationships of a commercial community; they covered mercantile matters, and operated only within the boundaries of the burgh and for its inhabitants. The burghs, as local administrative units, therefore played a considerable part in the administration of an important section of the population of Scotland.

From the middle of the fifteenth century the founding of burghs became a fashionable - and occasionally profitable - habit; but the newer foundations were created not by the Crown but by ambitious individual barons seeking profit and prestige. In numbers if not in commercial effectiveness the burghs of barony such as Hawick, Torthorwald, Duns and Preston (iii) swamped the older royal burghs. Almost without

(i) of. Mackenzie, Burghs, p.49.

(ii) ib., pp. 55, 56.

(iii) Hawick received a charter from Douglas of Drumlanrig in 1537, although there are earlier references to it as a burgh of barony (R.M.S., ii, 3576; ib., iii, 3107). Duns was made a burgh of barony in 1490 (ib., ii, 1937) and Preston, in Bunkle Barony, in 1602 (ib., vi, 1283. Torthorwald was founded in 1473 (H.M.S.C.R., xv, 8, p.47; Pryde, Burghs, pp.99-100). Many of these baronial foundations, not being based on economic necessity, never developed beyond the village stage; Preston and Torthorwald today are single farms.

exception they were dominated by the local lords who caused them to be erected. And by the 16th century even the royal burghs, in theory subordinated to the central authority, had fallen to a large extent under a more local control; for the Act of 1535 (i), which forbade the election to any administrative office within the burgh of men who were not resident merchants, was completely disregarded, and powerful local barons were regularly controlling these positions. In 1565 it would appear that the provostship of Jedburgh had been virtually hereditary in the family of Rutherford of Hundolee or their nominees for some considerable time (ii); in 1590 William Ker of Cessford, as warden of the marches, attempted with royal assistance to dominate the burgh by forcing through his own election as provost, but a Rutherford again occupied this position in 1592 (iii). To the burgesses the advantages of obtaining the services of a powerful neighbouring lord were considerable; and the local lairds were not slow to appreciate the opportunities offered to them to increase their own power and influence.

The burghs of the area, which from their origins could have been expected to be centres of effective royal administration, were therefore absorbed politically into the surrounding countryside, and they took part in the turbulent activities of the baron most able to dominate them. A burgh could even be at blood feud with an individual, as the burgesses of Jedburgh were with Nicholas Rutherford of Hundolee in 1565 (iv); in 1579 the Provost and Baillies of the same burgh, allied to the Rutherfords, the Turnbulls of Bedrule and the Douglasses of Bonjedburgh,

(i) A.P.S., ii, p.349, c.35.

(ii) R.P.C.S., i, p.406.

(iii) ib., iv, p.530; ib., v, p.13.

(iv) R.P.C.S., i, p.407.

had been at feud with the Kers of Cesford for some time (i). Since the judicial and administrative powers exercised by the burgh courts were limited to commercial and other internal affairs, the causes of the turbulence which was the major problem of the Crown in this area scarcely came within their competence. A burgess whose goods were stolen by a reiver had to seek their recovery from another court; Thomas Graham, the owner of a shop in Selkirk, sought justice from the King's Justiciar in the burgh court of Edinburgh in 1538, against certain Liddesdale thieves who had ransacked his shop and stolen cloth to the value of 100 merks (ii). Dominated by their powerful baronial neighbours, and with a highly specialised jurisdiction, the courts of the border burghs could, in the 16th century, scarcely be effective units for the maintenance of law and order on behalf of the Crown.

During the 16th century the ordinary local administration of the Scottish border region, although apparently regular in operation and fairly efficient in routine matters, was not sufficiently effective to solve the administrative problems of the Scottish king in this area. The power of the burgh courts was limited, and the border burghs were no longer used as royal administrative centres except on unusual and infrequent occasions; the private units of jurisdiction were in decline, and royal

(i) R.P.C.S., iii, pp.100-1.

(ii) Armstrong, App.xxx, p.xxxviii.

control of the sherifffdoms had been lost. Burgh, barony and sherifffdom were all dominated by the chief men of the area who could use their administrative power to further their own interests. In addition these local administrators were faced with the necessity of resolving the conflict between their administrative duties on behalf of the crown, and their social obligations to their kinsmen, tenants and followers; almost invariably they decided in favour of their obligations to society. The complexity of society and the strength of social bonds which, as has already been seen, contributed to the notorious turbulence of the region, thus also tended to prevent effective measures being taken in the locality itself to curb the disorder. Internal administration required to be made more effective by linking it more closely to the central government.

But the criminal activity of the frontier society was an international problem, not merely a matter for the ordinary administration of England and Scotland; internal administration, no matter how efficient, could not in itself solve the problem of maintaining order. Before any administrative efficiency could be secured, effective frontier co-operation between the two states was necessary.

Chapter 2

The Wardens of the Marches, and other Officials

The normal method of transfrontier co-operation between governments is of course through negotiation by diplomacy. But in the middle ages diplomatic machinery was for various reasons not highly developed; and prior to the establishment, in the 15th and 16th centuries, of resident ambassadors in foreign capitals, the missions of royal legati, who travelled "without undignified haste", were often slow in reaching results. An English mission in 1328 travelling from York to Edinburgh and back to Stamford took more than forty days for the journey, although actual negotiations were completed rapidly within a week (1). The frequency of the disturbances on the Anglo-Scottish frontier made it difficult to negotiate by these methods, and it was early found necessary to settle these local border disputes as far as possible by local officials. These were the officials known as Wardens of the Marches.

1. The Origins of the Office of Warden

In the early days of the feudal kingdom of Scotland the frontier problem was of minor importance; the demarcation line between the two kingdoms was fluid throughout the 11th and 12th centuries, and as long as the Norman knights imported by David I held lands immediately on both sides, as Robert de Brus, Bernard de Bailleul and many others did (11), no frontier incident could reach really dangerous proportions. But as the newcomers were absorbed and some developed a more Scottish outlook, and as the Scottish kings began to follow a more purely Scottish

(1) Mattingly, p.36; Stones, Mission.

(11) Ritchie, p.213.

policy, the border became more important as a political and cultural division, and the possibility of serious situations arising in the area became more apparent. Steps were taken to clarify much of the source of the trouble by marking out the frontier line in as clear a fashion as possible (i); but it was not until 1249, during the minority of Alexander III, that a serious attempt was made to solve the problem. Lines of demarcation were again suggested, and some of the customary laws of the marches were determined by local inquest and written down; the code thus evolved was to be administered by the border sheriffs. In the Eastern and central areas the sheriffs of Northumberland and Cumberland acted for England, and those of Edinburgh, Berwick and Roxburgh for Scotland; in the West the sheriffs of Carlisle and Dumfries carried out this duty (ii). They settled the border problems that arise as part of their shrieval functions (iii), and border administration at this stage showed few of the military facets which were to characterise it later.

There is no trace of Wardens of the Marches until the War of Independence increased national animosities and created new military and administrative problems. The civilian character of the English office of sheriff made necessary the appointment of professional military officials

(i) In 1222 an attempt by commissioners of both kingdoms to settle the boundary broke up in disorder, the Scots jurors disagreeing violently with the English as to the true delineation of the ancient marches (Bain, i, 832). In 1246 a portion of the frontier was recognised without disagreement (ib., i, 1699).

(ii) A.P.S., i, pp.83-4; Reid, Warden, p.480.

(iii) In 1250 the sheriff and coroners of Cumberland were commanded, with knights and freemen of the shire, to repair to the accustomed place in the land of the king of Scots, and do justice according to the law and custom of the march in a certain case (G.Cl.R., 1247-51, p.356).

to deal with the troubled area, and men such as John de St John in 1300 and Robert Clifford in 1309 became the earliest English wardens (1). In 1300 Adam Gordon is described as the Scottish warden; and Sir James Douglas - the good Sir James - was made warden of the marches of Scotland in 1314 with the primarily military duty of clearing the border area of those Englishmen remaining there after Bannockburn (11). The office of warden was thus essentially military in its origins; neither side was interested at this stage in co-operating to preserve peace on the frontier as they had done the previous century.

This interest developed initially when truces were arranged between the kingdoms in 1317 and 1323. To see that the truce provisions were kept on the frontier, the English crown granted special commissions and powers to the military wardens, who acquired authority to punish breaches of the truce according to the law and custom of the march (111). This would imply some form of negotiation with equivalent Scottish officials, but there is no direct evidence of the grant of such powers in Scotland. With the breaking of truces and treaties, and the beginning of a new era of conquest and counter-conquest during the reign of David II, the office of warden degenerated and on both sides its military characteristics once more predominated. The days of truce held by the wardens, and the truces arranged by them during this period were thus ordinary military truces brought about by the normal course of warfare; the truce made by the English and Scottish wardens in 1360 during the siege of Loughmaben falls

(1) Bain, 11, 1169; Rot.Scot., 1, p.76

(11) Fraser, Douglas Book, 1, p.127.

(111) O.Pat.R., 1321-7, p.290.

into this category (i). But these military truces held the germ of the later wardens' day of truce for negotiation and redress. In 1357 William Lord Douglas sought redress from the English warden for English military depredations in time of truce; and in 1366 the wardens on both sides, as keepers of the military truce, were expected to arrange for redress, according to the law of the march, of damage done against the terms of the truce (ii). Accordingly the Scottish wardens in 1368, and the English wardens in 1373, were given more general authority to treat with their counterparts for giving and taking redress (iii). From this time onwards, as well as conducting offensive and defensive military actions, the wardens were concerned with negotiation for the mutual exchange of justice (iv); and the power to offer and accept redress was soon included in a warden's commission as a matter of course (v).

Days of truce were irregular, and took place at long intervals. They were difficult to arrange, and considerable notice was given to the parties on both sides; a meeting for January 1378 was arranged the previous September, and one for June 1381 had been organised eight months earlier (vi). If, as has been suggested (vii), these meetings were "opportunities for displays of fine armour and for knightly caperings", a lengthy period of preparation was necessary; but there is no direct evidence for these tournaments and, although this suggestion cannot be rejected in view of the

(i) Bain, iv, 47.

(ii) Fraser, Douglas Book, iv, pp.311-3; Bain, iv, 127.

(iii) A.P.S., i, pp.145-6; Rot.Scot., i, p.958.

(iv) The earliest meeting known to the writer arranged specifically for redress was to be held in January, 1378 (Bain, iv, 242).

(v) Reid, Warden, p.483, shows this process for English wardens; a commission of 1434 shows its completion for Scottish wardens (Fraser, Douglas Book, iii, p.65).

(vi) Bain, iv, 242, 297.

(vii) by Hodgkin, p.18.

chivalrous attitude of the times, it seems more likely that the delay was necessary in order that both sides might prepare their legal cases.

These meetings were important occasions; kings, such as David II and James I, were sometimes present (i), and on both sides members of the royal families acted as wardens of the marches - John of Gaunt, and John, Duke of Bedford, acted for England, while for Scotland the Duke of Rothesay, son of Robert III, and the Duke of Albany, brother of James III, both performed these duties. Hodgkin describes this as "a sort of complimentary Wardenship" (ii). But although these men sometimes worked through deputies, they were by no means "ornamental wardens"; the letters of John of Lancaster to his father, Henry IV, show how complicated his tasks were during his ten years tenure of the office, and how difficult it was for him to maintain order on the border lacking both forces and money (iii). These royal wardens were, however, the exception; normally the official was a member of one of the powerful border families - a Neville or a Percy in England, or a Douglas in Scotland (iv). These men undertook the onerous task of guarding the frontiers and maintaining some form of order in the border area, often at considerable expense to themselves; for the Scottish wardens received no regular salary until the latter part of the 15th century, while the English wardens, whose expenses and allowances were a charge on the Crown, received tallies which were often not honoured by the Exchequer (v).

(i) Bain, iv, 47.

(ii) Hodgkin, p.11.

(iii) Chrimes, Lancaster, pp.13-25. John of Lancaster appears to have remained on the border and acted in person throughout his tenure of office.

(iv) cf. Storey, Wardens.

(v) For Scottish salaries see later in this chapter; for English dishonoured Exchequer tallies see A. Steel, 'English Government Finance, 1377-1413', E.H.R., 11, pp.40, 588.

The wardenship of the marches was thus primarily a military office; and its military character predominated at least until the end of the 15th century. But to these military functions had been added the more peaceful duties of international negotiation and certain aspects of internal administration. It was a difficult office on both sides of the frontier, and appointment brought danger, insecurity, hardship and sometimes poverty to those who undertook these tasks.

2. The Boundary Line and the Scottish Marches in the 16th Century

The attempts made by the English and Scottish governments in the 13th century to define the boundary line between the two kingdoms were soon nullified by the constant warfare of the two following centuries; invasion and counter-invasion, claim and counter-claim, blotted out the line of demarcation until in the early 16th century it could be stated that except in the extreme east and west, where Tweed and Solway gave a clear line, the boundary was doubtful and a matter for contention (1). The lack of clarification in this increased the difficulty of administering the area, and the necessity of defining the boundary continuously exercised the minds of officials on both sides of the border during the 16th century.

The earliest surveys of the border line were made in 1542 and 1550 by Robert Bowes (11). He was concerned mainly with the boundary between the English east march and the Scottish middle march from the Tweed to the Cheviot. In this stretch alone he found three major areas of debateable land - the Midrig, near Carham, of 60 acres, the Threaprig of 300 acres, and an area of 40 acres near Sawdronburn - as well as other smaller disputed areas, fields of a few acres each near Pressen, Mindrum and the Halterburn.

(1) Major, p.20.

(11) Mack, pp.15 et seq. quoting Hodgson, 111, pt.2.

In 1550 Bowes also noted a disputed area between the two middle marches; this was near Gamelspathwalls, at the eastern end of these marches. Although Bowes did not mention it directly, there appears also to have been some debateable land at the western end of the middle marches, near Liddesdale (i). Between the two west marches lay the largest area of debateable land, an extent of land between the rivers Esk and Sark about ten miles long and four miles wide (ii). This area in particular caused trouble to border administrators, partly because of its extent but mainly because it contained permanent inhabitants for whose evil actions the officials on neither side were able to receive redress, lest they give the appearance of allowing the claim to ownership of the opposite kingdom; if, for example, the English warden accepted redress from the Scottish warden for the activities of any inhabitants of this debateable land, he accepted also the implication that the evildoers were Scotsmen, and therefore that the territory itself was part of Scotland.

These areas of disputed ownership were centres of unrest; they caused administrative difficulties, and increased international ill-will and local resentment. Some efforts were made during the 16th century to solve this problem, and by dividing the disputed areas or by exchanging one for another it was hoped agreement on an exact boundary line would be reached. The largest area was tackled first and most successfully; the principle of division, accepted as early as 1522, was adopted (iii), and after several attempts the debateable land on the west march was finally divided, in 1552,

(i) C.S.P. Dom. Add., 1566-79, p.162.

(ii) Armstrong, App.xxix.

(iii) Hy.VIII, iii, 2, 2695.

into two portions, and a ditch dug between the Sark and the Esk to mark the new boundary (i). The commissioners who drew up the treaty of 1555 decided that some of the areas of debateable ground near Redenburn should be divided by a dyke as on the West march, and in July 1564 commissioners were appointed to determine the exact boundaries on the east and middle marches and to eliminate disputed areas (ii); but nothing appears to have been concluded on either occasion. Later attempts were also inconclusive, although the subject was frequently raised (iii), and the union of the kingdoms took place in 1603 without their exact boundaries being fixed; as late as 1837 some areas were still regarded as being in dispute (iv).

This boundary, uncertain in many places, was to be defended in peace and war by the wardens of the marches on either side. In war they defended the frontier by military force, and in peace they were expected to punish and redress the frequent breaches of the truce, the border forays in which horses, sheep and cattle were stolen. The tracing of these thefts and the men who had participated in them involved the wardens in extensive searches over a large and necessarily vague area on his side of the frontier. Hence the district over which a warden exercised administrative control - his March - was not confined to the immediate boundary, but stretched inland for a considerable distance. By the 16th century three main administrative districts were defined on the Scottish side of the border - the East, Middle and West marches.

The East march was the smallest. It consisted of the region known as "the Merse", the wide valley of the lower Tweed in the southern and

(i) For the problems caused by this area, and the diplomatic difficulties involved in solving them, see Mackenzie, 'Debateable Land'

(ii) C.S.P.(For.), 1564-5, 572; C.B.P., i, 6.

(iii) e.g. C.S.P.(For.), 1575-7, 554; C.Scot.P., viii, p.428.

(iv) Mack, p.9; map dated 1837 reproduced opposite p.193.

eastern portions of the sheriffdom of Berwick (i); the other districts of the sheriffdom, Lauderdale and Lannermuir, did not ^{always} fall within the warden's jurisdiction (ii).

The Middle march was defined in 1581 as the "whole shires" of Roxburgh, Selkirk and Peebles, and the warden could summon the lieges of all three sheriffdoms to accompany him on days of truce (iii). It is probable that this definition held for the entire 16th century, although it should be noted that in 1525 Tweeddale and Ettrickforest, forming most of Selkirkshire and Peeblesshire, were regarded as being outside the march (iv). Liddesdale, although linked geographically with the West march, was technically a part of the Middle wardenry; but, for much of the 16th century, a separate administrative officer was responsible for this area, either the Lord of Liddesdale, or a Keeper of Liddesdale appointed by the Crown (v).

The West march was usually defined in 16th century commissions of wardenry as consisting of "Annandale, Eskdale, Ewisdale, Nethisdale and Galloway as well above as under the water of Cree" (vi). It has been suggested that this region comprised the sheriffdom of Dumfries and the Stewartries of Annandale and Kirkcudbright (vii); and Tough and J. D. Mackie both give maps indicating that the Cree forms the western boundary of the march (viii). It is, however, very doubtful if the phrase "as well above as under the water of Cree" can indicate a boundary; the "partis of

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- (i) Macfarlane, Geographical Collections, 111, p.159
(ii) A.D.C., p.215. (iii) R.P.C.S., 111, pp.344, 570.
(iv) A.D.C., p.215. (v) see section 4 of this chapter
(vi) e.g. H.Mss.C.R., xv, 8, p.23. (vii) Tough, p.21.
(viii) Maps in Tough, p.22, and Mackie, Tudors, p.278.

Galloway above the Watter of Grie" referred in 1598 to the town of Wigton and its environs, well beyond that boundary (i), and use of these words implies the area to the west of that river. There is evidence to suggest that both wardens and central power regarded the west march as extending to parts of Wigtonshire, if not to the whole sheriffdom.

The case for the inclusion of the entire sheriffdom within the West march rests on a successful claim of Robert, Lord Maxwell in 1533. He asserted that "of lang tyme bypast the scherefdome of Wigton was decernit be the lordis of counsell to pertene to the west wardenry", and requested official support for his demands of men and materials from that shire; this support was readily given (ii). Whether or not the sheriffdom itself was included in the wardenry, the inhabitants of Wigton itself were certainly expected to give service to the warden (iii); new wardens were proclaimed there, and proclamation of warden demands and activities was regularly made (iv). The warden was expected to, and did, make investigations in that district; in 1565 Maxwell of Terreglis, acting as warden, examined the piratical activities of the seamen of Whithorn (v). In addition landowners of the shire, including in 1567 Patrick Agnew, the sheriff, and William Gordon of Craichlaw, were among those held responsible for justice and quietness within the march (vi). The inhabitants of Wigtonshire probably played only a small part in supporting the warden; but it is worthy of note that Alexander Stewart of Garleis, the owner of extensive lands in Wigtonshire, was present in 1569 at a warden judicial raid, and acted in 1593 as

(i) R.P.C.S., v, p.508

(ii) A.D.C., p.396

(iii) R.P.C.S., iii, pp.339-40

(iv) T.A., x, p.299; R.P.C.S., i, p.300; ib., iii, pp.721-2

(v) ib. i, p.336

(vi) ib., i, p.570.

joint warden of the march (1).

It seems certain that the Council and the wardens assumed that parts at least of Wigtonshire were within the West march. This Wardenry therefore comprised not only the sheriffdom of Dumfries and the two Stewartries, but also parts of the sheriffdom of Wigton beyond the Water of Cree; the wardens' effective power was probably more extensive in the former areas.

3. The Office of Warden in the 16th century: Appointment, Payment and Subordinates.

The first Scottish wardens whose appointments were recorded were appointed in Parliament in 1368 (ii); this practice continued throughout the 14th and 15th centuries. In 1451 William Earl of Douglas was confirmed in his wardenship of the East and Middle marches by the King "cum plena et matura deliberatione, ac cum consensu et assensu trium regni statuum in Parlamento" (iii); and in 1481 Archibald, Earl of Angus, and Alan, Lord Cathcart, undertaking the office on the East and West marches respectively, were "sworne there to in presence of the Thre Estaitis" (iv). The last wardens to be so appointed took office in 1489 (v); after this date this function of Parliament was assumed by the Lords of the Secret or Privy Council, which had begun to take more definite form about this time as part of the policy of James IV of concentrating executive and judicial power in an institution which could be directed personally by the monarch (vi).

(1) 1b., ii, p.69; 1b., v, p.112. His grandson was also appointed a joint warden in 1596 (1b., v, p.292.)

(ii) A.P.S., i, p.504.

(iii) 1b., ii, p.71; R.M.S., ii, 468.

(iv) A.P.S., ii, p.132.

(v) 1b., ii, p.214.

(vi) Mackinnon, pp. 213, 249.

During the 16th century Parliament, which previously had interested itself in the office and even exercised some control over it (i), took little cognizance of the wardenship, and, until very late in the century, few references are made to it in any of its acts. Only on one occasion in the 16th century was there any suggestion of Parliamentary control over the appointment of a warden. This was in January, 1526, when Robert, Lord Maxwell sought to resign office on the West march, probably because he had been reprimanded by the Council for his conduct (ii). The Lords of Council refused to accept the resignation on the grounds that during the King's minority they had no power to do so "bot be autorite of parliament"; and accordingly he must remain warden "unto the tyme that the thre estatys myght provyde for ane wardane". Although this was valid constitutional doctrine for this period, it seems to have been used on this occasion merely as a device of the Council to gain time to reach a compromise with Maxwell; both internal and international affairs were exceedingly complicated at this time (see Chap. 8, Section 1)^{pp.339-42} and it was essential to the Government that Maxwell should remain in office. Within 14 days he accepted office once more, probably in the presence of the Council, with certain agreed safeguards, and received a new commission of office (iii). There is no evidence that any reference was made to Parliament although it was sitting at the time (iv), and the suggestion of parliamentary supervision contained in the Council's original reply cannot be taken seriously.

(i) as, e.g., in 1491 when Parliament ordered "scharp writtin be send" to the wardens to observe days of truce with their English counterparts (A.P.S., ii, p.226)

(ii) A.D.C., p.234; T.A., v, p.261

(iii) A.D.C., pp.236-7; Casflaveroock Book, ii, pp.463-4.

(iv) A.P.S., ii, p.299.

Examination of the appointments to the wardenship during the 16th century show that they were made in the council. The usual formula is that the King "with advise of the Lordis of Secreit Counsaile, hes maid and constitute" the warden (i); and sometimes such appointment was made only after considerable debate on the subject (ii). Occasionally the Crown nominated a candidate, or the Council acted without the King being present (iii) but usually it was a matter for the Crown and Council acting together, and the Regent Arran, writing to Mary, the Queen Dowager, in 1552, asserted that, when new wardens had to be appointed, it "necessar is that certane of the counsaile be convenit to that effect." (iv) Often the warden chosen was present at the debate, and accepted office and took the oath immediately in presence of the Council; Andrew Ker in 1515, before the Governor and Council, did "swer his bodely aicht upon the haly evangillis that he sult lelely and trewly execut" his office (v). If he was not present, the new warden would be informed of his appointment by letter signed personally by the King or Regent (vi), by letter under the secret seal (vii), or by letter under the quarter seal (viii). The actual commission of office was granted under the great seal throughout the century (ix).

For the period under study, it was therefore the Council, not Parliament, which was concerned in conjunction with the King in appointing the wardens of the marches; and it was through the Council that their instructions were sent and supervision exercised (x).

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- (i) R.P.C.S., 11, p.678 (ii) ib., 111, pp.73-86; ib., vi, p.156
 (iii) ib., 1v, p.322; ib., 111, p.581. (iv) Lorraine Corr., p.361.
 (v) A.D.C., p.65 (vi) Annandale Book, 11, p.3; H.Mas.C.R., xii, 8, p.99.
 (vii) R.S.S., 1, 291 (this method appears to have been infrequent).
 (viii) H.Mas.C.R., xii, 8, p.183; ib., xv, 8, p.23.
 (ix) A.D.C., p.236; R.P.C.S., 1, p.121.
 (x) see Chap. 4, section 2, pp.202-4.

Those who were burdened with the office during most of this century were landed men of importance within the march entrusted to their care (1). This territorial qualification was essential for the normal effective operation of the wardenship, which, as will be seen, depended almost entirely on the goodwill and co-operation that other landowners and heads of surnames were willing to offer to the warden. The extent of this goodwill in turn depended greatly on the purely local power of the official, and this was based ultimately on the extent of his local landed possessions. Hence the Crown tended to offer the wardenship to the head of the most powerful family in the march - powerful in the extent of its own possessions and also in the respect therefore given it by its neighbours - who could be expected to deal with the onerous duties associated with the office more effectively than a lesser man, or a man from outside the march, who would require material support from the central government to make his authority effective.

After Flodden, the most powerful families in the marches were the Humes in the East, the Maxwells in the West and the Kers of Gosford in the Middle. The Humes, centred territorially on the barony of Hume, possessed also the baronies of Dunglass and Ladykirk in the East march (11), and by marriage shortly added to their lands part of the baronies of Lambden and Haliburton; they held also the office of bailie of the lands of the priory of Coldingham. The head of the family of Hume, by virtue of these possessions and the influence he could wield through marriage alliances and other ties of kinship, was the most powerful man in the Merse, the district in which the authority of the warden of the East march had to be most effective. In the

(1) Similar considerations governed the appointment of the English officials (Storey, Wardens, p.596).

(11) They held also the barony of Broxfield in the Middle march, and ^{half of} ~~also~~ Hassendean. For details of baronies held by the Humes and the Kers, see Appendix 2 and the baronial map.

West march, the Maxwell family held the baronies of Carlawerook and Granane, in Dumfriesshire and Kirkcudbright respectively (i); they held also the hereditary offices of Stewart of Annandale and Stewart of Kirkcudbright, to the latter of which was attached the custody of Threave Castle (ii). To these were added the office of bailie of the ecclesiastical regalities and baronies of the Abbeys of Dundrennan, Tongland, Sweetheart and Holywood, the Provostry of Lincluden and the Preceptory of Trailtrow (iii); all these together with the ties of kinship and bonds of manrent, gave this family a sure basis of local power for the exercise of the wardenship on the West march. The power of the Kers of Gosford was not based on such extensive territories; in addition to the barony of Gosford they held but the barony of Auld Roxburgh and the offices of bailie of Kelso Regality and the ecclesiastical baronies of Ancrum, Lilliesleaf and Ashkirk. Hence the centre of their power lay in East Teviotdale, and as wardens they had comparatively little control over the more westerly area of the wardenry where their rivals the Scotts of Brankholme were based.

It was thus with royal approval that these already great families exercised this office, gaining appreciably in power in the process; but provided they used their power on the Crown's behalf, kings and regents were content with this position. When, however, they rebelled against the central authority, as Alexander, 3rd Lord Hume did in 1516; or when the power of the dominant family was threatened by the inheritance of a minor by the increasing power of another local family; then the central authorities were forced to adopt other methods. In these circumstances one of three alternative courses

(i) Ex.R., xiv, p.530.

(ii) R.M.S., 11, 3861; ib., 111, 391.

(iii) Fraser, Carlawerook Book, 1, p.175.

was followed. The office could be exercised by an official of the central government sent to the borders either as warden or lieutenant, as Labastie was in 1516 when all branches of the Hume family had been accused of treason; the wardenship could be exercised by a group of local lairds, as it was on the Middle march in 1526 during the minority of Walter Ker of Cessford, and on the West march in 1593 when no single person was sufficiently powerful to take complete control; or it could be given to the head of another powerful family in the area, as it was given to Maxwell of Terreglis during the minority of the 7th and 8th Lords Maxwell. On the whole these were regarded as emergency measures, and on the return of normal conditions the office was generally restored to the head of the family which had originally held it.

The virtual monopoly enjoyed by these families gives the wardenship the appearance of an hereditary office; yet in an age when many administrative positions were heritable, this office was not legally allowed to become so. Only one appointment, that of William, Earl of Douglas in 1451, is known where the office was regarded as heritable, and this appointment was invalidated within four years by an act of Parliament forbidding the appointment of wardens in fee and heritage (i). This rule was observed throughout the 16th century (ii). Occasionally the duration of the appointment was specifically mentioned - Alexander Lord Hume was to hold office for seven years from 1489 (iii); other appointments were on a yearly basis. John, Earl of Lennox (1524), Archibald, Earl of Angus (1527) and William, Earl of Angus (1598) were each appointed for one year only (iv); these are

(i) R.M.S., 11, 468; A.P.S., 11, p.43.

(ii) Except in 1596 when Walter Scott of Branksholme was appointed hereditary Keeper of Liddesdale (R.P.C.S., v, p.178). But James VI must have been well aware at this time that the office was unlikely to exist much longer.

(iii) R.M.S., 11, 1893.

(iv) A.D.C., pp.207, 259; R.P.C.S., v, p.466.

cases where the warden, from another part of Scotland, was perhaps unwilling to accept office for more than this short term (i). Usually the office was granted for an undefined period - "durante regis voluntate" or "induring my Lord Governouris will" (ii); this might be the lifetime of the person appointed, but was more generally a much shorter period. When Regents were changed, or gave way to a monarch who had reached his majority, the wardens had to be confirmed in their office and were often extremely lucky not to be replaced by others (iii). The Crown always reserved the right to terminate the office at will; in May, 1530, James V ordered all the wardens to be warded "during the kingis pleisour" while he himself undertook the subjugation of the borders for a short time (iv). Andrew Ker of Gosford (1525), Walter Ker of Gosford (1538 and 1544) and John, Lord Maxwell (1532) were all removed from office by the central authorities - Maxwell for "slewthfulness" (v); and it is probable that others such as Walter Ker of Gosford (1550), his son William Ker (1584) and Thomas Ker of Fernihure (1585) were also dismissed although there is no formal record of their dismissal.

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- (i) Robert, Lord Maxwell's commission was renewed for one year on 10 March, 1525 (A.D.C., p.217) and thereafter on the following dates:

26 Jan. 1526	(ib., p.237)
16 July 1527	(p.259)
6 July 1528	(p.276)
4 Feb. 1529	(p.303)
24 July 1529	(p.312) for three years.

This appears to show a system of annual renewal which has no parallel on any other march at any other time; but the 1526 and Feb. 1529 renewals were made at the initiative of Maxwell himself in order to obtain better conditions of office; and the 1528 renewal also applied to the other wardens, being occasioned by a change in the central government. This phenomenon merely reflects the unsettled conditions of the time.

- (ii) Ex.R., xx, p.435; R.P.C.S., ii, p.121.
(iii) A.D.C., p.276; R.P.C.S., i, pp.157, 169.
(iv) A.D.C., pp.327-8
(v) ib., p.214; Fraser, Scotts of Buccleuch, ii, p.182; R.P.C.S., iii, p.531.

The Crown, therefore, had full powers of appointment to and dismissal from the office; but those appointed had certain rights, too. On only a few occasions were they 'nominated' to the wardenship - they 'accepted' the burden of office offered to them; the person asked to accept the office was generally in a very favourable position for bargaining with the Government, owing to the fact that there was seldom any other person suitable for the office. It was possible to refuse the appointment, as Maxwell of Terreglis did in 1553 (i); but normally the opportunity was taken to gain favours and conditions, either personal, or to make more efficient the functioning of the office. In 1528 George, Lord Hume and the Abbot of Kelso, acting jointly in East march, sought personal advantages, the grant of the Regality of Bonkle and Preston and promotion to the priory of Coldingham respectively (ii).

But more often wardens tended to seek safeguards for their office; the duties of the warden were onerous if properly carried out, and an efficient official could rapidly create against himself a body of unfavourable opinion which would lay him open both to the legal danger of false accusations and the physical dangers of assassination. In 1565 Maxwell of Terreglis was accused of high treason and "utheris Haynous crymes" by his personal enemies on the West march (iii); and no fewer than four wardens - Labastie (1517), Brankholme (1552), Maxwell (1593) and Carmichael (1600) - were killed in office by local malcontents. In addition, it was almost impossible to resign should the onus of office prove too great (iv). It is

(i) R.P.C.S., 1, p.143. (ii) A.D.C., p.288. (iii) R.P.C.S., 1, pp.414-15.
(iv) Robert, Lord Maxwell sought to resign in 1586, but his motives may be questioned, and in any case the attempt was unsuccessful. The resignation of John, Lord Maxwell in 1577 may have been contrived by the Council (R.P.C.S., 11, p.613). Angus "demitted" office in 1588 (ib., 11, p.678); this may be a genuine example of resignation. English wardens similarly could not resign from office of their own volition; apparent "resignations" were probably made under royal pressure (Coulomb, pp.24, 39)

not surprising that those accepting the wardenship sought to safeguard their position. To nullify the legal danger, a declaration could be obtained that the warden was not liable to punishment for any criminal act of which he might be accused through the exercise of his office. This excessive protection was modified in 1565; any accusation had to be in writing, and the warden had to answer in fair trial (i). Little could be done to avoid the physical danger of death, but some provision could be made for a slain warden's heir; the heir was to have his ward, relief and marriage free, without any composition (ii). Remission of these feudal casualties was usually granted only on specific occasions - before Harlaw, Flodden and Pinkie (iii). The privilege was here granted to an office and thus became continuous in operation, not limited to one specific military engagement; it was frequently granted to wardens under the title of "the privilege of Twislaugh" or "the privilege of Monktonhall", and could be extended to cover not only the wardens' official subordinates but also the local barons co-operating with him. This extensive privilege could seriously have weakened the feudal income of the Crown, a considerable portion of the royal revenue.

In addition to these personal benefits, a warden would seek power to make his wardenship effective. He would request that there should be no exemptions granted to his authority, and that all men within his wardenry should obey him (iv); that he should receive military support from

(i) A.D.C., p.90; R.P.C.S., i, p.392.

(ii) A.D.C., p.287; R.P.C.S., i, p.394; ib., vi, p.154.

(iii) Source Book, i, p.170; A.D.C., p.1; A.P.S., ii, pp.599-600.

(iv) A.D.C., p.303. In 1588 the wardens of the West march could claim authority over inhabitants of the Middle march, while in 1600 the men within all the marches were declared subject to each warden (R.P.C.S., iv, p.322; ib., vi, p.154)

the Crown to assist him in pacifying his march (i); that legal measures should be taken by the Council against those disobedient to his authority; and that he should have full information from the Council on conditions within the march, e.g. concerning those taking up new bands and those recently declared fugitive (ii). The fact that these conditions were invariably granted did not ensure that they were carried out in full, or that they were effective. Military support, for financial reasons, tended to be transitory; legal measures taken by the central authority tended to be ineffective, and were largely ignored by the independent borderers; and although now information could be given to the warden, his knowledge of affairs on his march was necessarily incomplete owing to the difficulty, in an age when officers of the Crown looked on all documents and correspondence as their own private property, of abstracting from the previous holder of the office the older warden books and rolls (iii). Yet these demands and the reaction to them show that crown and warden were well aware what measures were required to make the office an efficient and effective means of controlling the Borders, and that failure to do so was not caused by lack of administrative initiative, ideas or ability.

On only one occasion is a warden found using this bargaining situation at the moment of appointment to extract from the Crown payment of

(i) R.P.C.S., 1, p.393; ib., iii, p.73.

(ii) ib., iii, p.76

(iii) e.g. Johnston in 1580 was unable to make delivery of certain bills to the English warden because the relevant documents were still in the hands of Maxwell, the previous warden, who refused to give them up; Johnston, not knowing details of the bills, could not give redress (R.P.C.S., iii, p.286.)

his salary; this was in 1534 when Hume desired 'the fe and pensioun quhilk was wount to be payit to him or auld' to be paid to him (i). Yet the financial profits of the office were of considerable importance to the wardens.

Originally a warden received no fee or salary as such, but his expenses at days of truce were met by the Exchequer. These expenses varied considerably. In 1388 the Earl of Douglas was given 'de mandato regis speciali' the sum of 50 marks; while ten years later the Duke of Rothesay was given more than £800 for 'una dieta treugarum in marchis' (ii). In 1429 when James I attended a day of truce with English commissioners at Goldingham, his expenses amounted to £17. 19. 6 (iii). This type of payment continued well into the 16th century; Arran was given a payment 'in certis necessariis' in riding to the marches on a day of truce in 1522 (iv), and as late as 1558 David Hamilton of Preston and Fingalton received payments to support ^{his} ~~their~~ expenses (v). But the more normal habit by this time was to pay an annual salary.

This habit seems to have arisen in the middle of the 14th century. The Warden of the West march, Sir Andrew Stewart, Lord Avondale, received from 1436 an annual fee in cash and victual for keeping Lockmaben Castle (vi), and in 1466 and 1467 William Douglas of Cluny received a fee as Warden (vii). Initially these salaries also tended to vary. James Stewart,

(i) R.P.C.S., i, p.278.

(ii) Ex.R., iii, pp.691, 465. Rothesay was not paid in a single sum, but by a number of payments which total £853. 16. 3. This large sum might have been required to defray the expenses of a tournament (Hodgkin, pp.18-19.)

(iii) Ex.R., iv, p.486.

(iv) Ex.R., xiv, p.483.

(v) T.A., x, pp.168, 178, 189, 198, 203.

(vi) Ex.R., vi, pp.205, 274, 332, 352.

(vii) ib., vii, pp.400, 493.

Earl of Buchan received 200 merks annually throughout his tenure of office on the Middle march (1474 - 82), while his successor, the Earl of Angus, received 300 merks (i). In 1489, when Hume and Bothwell took over office, the fee was £100 for each march; and it remained at that basic figure throughout the 16th century (ii).

Payment was at first made by allotting to the warden the farms, mails or other profits of a certain portion of royal land to the requisite amount, the ordinary collector of such revenue producing the warden's receipt for the sum at the Exchequer (iii). Bothwell in 1489 received the mails of Ettrick Forest; Hume the following year took 'ad manus proprias de grassumis certorum locorum'; while Maxwell in 1523 retained the farms of the demesne lands of Kelton (iv). Later the salary was paid directly to the wardens by the Treasurer, who was responsible for the payment of officers of state; this method dates from 1517 on the East and Middle marches (v). On the West march, however, the fee was linked with the demesne lands of Kelton for much longer; it was until 1529 the responsibility of the Comptroller, and thereafter, until 1538, was a charge on the accounts of the Chamberlains of Galloway (vi). Not until 1541, when Maxwell was paid for this and the two preceeding years, was the Treasurer responsible for the payment of the salary to the warden of the West march (vii).

(i) ib., viii, p.483; ib., ix, pp.185, 271.

(ii) see Appendix 4. Except on one occasion when the Earl of Lennox was paid £50 per month (T.A., v, p.237). When the office was exercised by two or more persons, the fee of £100 was shared between them (ib., viii, p.103).

(iii) Ex.R., x, pp.100-1.n. (iv) ib., x, p.167; ib., xv, p.18.

(v) T.A., v, pp.98, 330 etc.

(vi) Ex.R., xv, pp.428, 448; ib., xvi, pp.27, 100, 210, etc.; ib., xvii, pp.22, 77.

(vii) T.A., vii, p.479; this may have been part of the alterations in frontier organization made by James V in 1538. of. Chap. 6, section 2, p.367.

In addition to his ordinary salary, a warden might receive a gift from the Crown; in 1519 Maxwell was granted escheat goods amounting almost to £2,000 for his good service in apprehending certain "theiffis and traitouris of the clan and surnam of Elwaldis and Armstrangis" (1).

Frequently the troubled state of the kingdom during the 16th century meant that payment was not made; yet the table of payments (ii) shows that when conditions were fairly stable payment was regular. Apart from lack of records in a few places, the major gaps in the payment series can be explained by the turbulent minority of James V, by the English war of 1543 - 50 and the Wars of the Congregation, or by the civil war of 1569 - 73; these were all periods of administrative instability. On the other hand, during the personal rule of James V, the early part of the regency of Mary of Lorraine, and the regency of Morton - all periods of governmental stability - payment was regularly made. Whenever possible the Crown, even in its normal state of poverty, seems to have tried to fulfil its financial obligations to these officials.

Two further phenomena shown by the table require explanation - the increase of the sum paid to the wardens, particularly on the West march, towards the middle of the century; and the cessation of payment, in 1565 on the East march and suddenly in 1586 on the Middle and West marches.

The increased fee took the form of the yearly payment of a sum of £400 or £500, additional to the basic salary of £100, as a pension for "gude services". Maxwell of Terreglis in 1552 was the first to receive this additional payment (iii). It seems to have become permanent on the West

(1) A.D.C., p.143
(ii) Appendix 4.
(iii) T.A., x, p.131.

march, probably because this district was more troublesome than the others; on the Middle march the pension was not paid regularly although the ordinary fee was, and it was not paid at all on the East march until Hume, in 1564, regarding it as his right, demanded payment (i). The pension, which during the regency of Mary of Lorraine might have been paid from resources provided by the French government, was not intended to become a permanent payment; eventually it was to be replaced by a benefice or other casualty of equivalent value. The benefice of St Bathans in Lanernuir was in fact given to a nominee of Hume's in 1566 "pro servitio per Alexander dominum Hume orient-
alium limitum gardianum impenso, et ad prebendum occasionem in dicto servitio perseverandi" (ii). As Hume himself might very well draw the revenue from this benefice, it can be regarded as a payment in lieu of the pension he demanded. His nominee remained prioress until at least 1585 (iii).

The reason why an impoverished crown should have to pay these pensions is obvious. The basic salary was low, and, in an era of rapidly rising prices and increasing standards of living, was continuously diminishing in value; the "summaris and expensis" of office were great, and an adequate salary was necessary to retain a competent official in the service of the Crown when other political groups and factions sought his allegiance. Even so, Maxwell of Terreglis, in spite of the offer of his salary and a pension of £500, refused to renew office in 1553 (iv).

(i) R.P.C.S., 1, p.273. The payment of this to Hume in 1565 was the only known occasion on which a warden on the East march was given additional payment (T.A., xi, p.513).

(ii) R.H.S., iv, 1716.

(iii) *ib.*, v, 1266.

(iv) R.P.C.S., 1, p.143.

The sudden cessation of payments altogether, while comparatively easy to explain, created a complex situation. Basically the phenomenon stemmed from the increasing poverty of the Crown, and the difficulty the Treasurer often seems to have had in paying the salary. On at least two occasions Johnstone, as Warden of the West march, had difficulty in getting his fee and other financial allowances from the Treasurer (i); and money available for this administrative purpose was lacking to such an extent that Walter Ker of Gosford was persuaded in 1581 to promise to execute his office of warden with as little charge or expense to the king as possible (ii). This eventually led to the disappearance of the salary entirely. The fact that the name of the recipient of the salary was not mentioned in the Treasurer's Accounts from 1583 on the West march and from 1585 on the Middle march probably meant that the sum was not in fact paid and that the entries were made merely to balance the accounts. Finally the Act passed in the Parliament of July, 1587, whereby the Treasurer was forbidden to exceed £20,000 in his annual discharge - a feature of Maitland's policy of economy - gave the excuse to drop the traditional book-keeping entries as well as the actual payments (iii).

The fact that no monetary salary was being paid to the wardens of the marches meant that some other financial reward had to be provided for these officials. On the East march payments ceased altogether in 1568 with the provision of a benefice for a nominee of Lord Hume (iv). No other payment appears to have been made to the wardens of this march after this date (v);

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- (i) R.P.C.S., iii, pp.316, 607.
 - (ii) ib., iii, p.345.
 - (iii) A.P.S., iii, p.456 (c.54, 1).
 - (iv) see above, p.78.
 - (v) Although in 1579 the Treasurer was commanded to pay the salary to Hume of Wedderburn, there is no evidence in the Accounts that it was in fact paid (H.Ms.C.R. Milne Home p.49; T.A.Mss.).

and although the office was held for a time by Hume of Coldenknowes and by Hume of Wedderburn, neither of these wardens appears to have received land or benefice in place of their salary. There is no indication why salary payments should have ceased on this march some twenty years earlier than on the other two marches; it is possible that since this march was considerably quieter than the others the warden was no longer put to the expense of providing a military force to keep it in order.

On the Middle march more definite alternatives were provided. Ker of Fernihurst, during his short tenure of office in 1584 as Warden and as Keeper of Liddesdale, was to receive an allowance of £1,000, either in victual from the ecclesiastical thirds of benefices of Kelso, Melrose and other former ecclesiastical lands in the border area, or in money from the collector of these thirds (i). This relieved for a time the direct pressure on the Treasurer; but the return to office of William Ker of Gosford, head of the traditional warden-family of this march, made a more permanent provision necessary. In 1588 an extensive area of land belonging formerly to the Abbeys of Melrose and Jedburgh was erected into a new secular barony of Roxburgh for William Ker and his heirs, for his weighty service in the office of warden of the Middle march (ii). There can be no doubt that this grant was in place of the warden's fee; and as an exchange it was obviously to Ker's financial advantage, when the rental of such a considerable area, the profits of justice over it, and the possibility of its economic exploitation are all considered. In 1595 Ker^x also

(i) R.P.C.S., 111, p.700.

(ii) R.M.S., v, 1521. In addition he had been given the barony of Ormiston in the previous year (ib., v, 1364).

received for the same weighty service lands in Ettrickforest which were erected into the barony of Ernsheuch (i). Yet in 1598 his son Robert could complain to the English warden "that he never had fee of the king for his maytenance" as warden; he had to wait until 1607 before lands were granted to him for his zeal in this office (ii).

On the West march the situation was complicated by the fact that the wardenship was no longer held continuously by the same family; this, a deliberate policy of the central government, made it impossible for land to be granted to the wardens instead of a monetary salary, and other expedients were necessary. In 1587 Herries was given the wards, reliefs, marriages and escheats falling to the king within the West wardenry for his fee; two years later Carmichael was assigned the proceeds of a special taxation of the King's lands (iii). Johnstone in 1600 was also granted certain royal casualties within the wardenry, and forfeitures for theft; to these were added in 1602 the fines to be levied on those lords, barons and yeomen who had failed to accompany him on days of truce or on raids of reprisal (iv). It is possible, too, that the English government aided certain wardens financially at this time; Bowes suggested to the English Privy Council in 1591 that Carmichael, who had been financially ruined by his tenure of the wardenship, should be given a pension (v).

The payment of salary thus died out, and was replaced by "ane worthie remembrance" sufficiently great, so it was intended, for the warden himself to "beir the charge of the said office" (vi). To provide this

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- (i) R.M.S., vi, 318.
 - (ii) C.B.P., ii, 998; R.M.S., vi, 2008.
 - (iii) R.P.C.S., iv, p.222; ib., iv, pp.396-7.
 - (iv) ib., vi, pp.153, 829-30.
 - (v) C.Scot.P., x, pp.460, 494.
 - (vi) R.P.C.S., vi, p.153.

"rememberance" various expedients were resorted to on the West march, while grants of lands and baronies were made on the Middle march; only on the East march was no clear alternative to the salary provided. Taken as a whole, these were desperate methods of payment, and show the financial straits of the Scottish Crown; and there was apparently little financial incentive to encourage any warden, although the Crown appears to have struggled to provide one towards the end of the century.

But in addition to his salary, a warden, throughout the 16th century, had another source of income; this was from the escheats of the criminals he had 'justified' (i). Maxwell, in 1527 and 1529 was to have the escheat goods of all thieves 'for his travale and labouris' (ii). Later the escheats were divided between the warden and the Crown; Hume's commission of 1550 allocated one half of all escheats to himself, the other to the Queen, while Johnstone's commission of 1579, distinguishing between the escheats of landed and unlanded men, granted the latter to him entirely, only the former being shared with the King (iii). The warden was expected to account for the royal portion in the Exchequer. In addition to these judicial escheats, the warden was entitled to a share of all the cattle and merchandise which he had confiscated while they were being illegally transported into England (iv). The value of this source of income is impossible to assess, but it must have been considerable even if the warden took effective action only against his

(i) This provision may equally have been intended to encourage the warden to prosecute his office effectively.

(ii) A.D.C., pp.259, 303.

(iii) Ex.R., xviii, p.498; Fraser, Annandale, i, pp.40-1.

(iv) Balfour, Practicks, p.589; A.P.S., ii, p.290; A.D.C., p.869.

personal enemies (i).

Out of this income - his salary from the Crown and the perquisites of his office - the warden was expected to defray all expenses incurred in the execution of his duties. The Crown, it is true, was responsible for paying some of the military forces which occasionally assisted the warden, but Johnstone's complaints show that these may often have been paid out of the warden's own pocket (ii). Occasionally, also, the Crown made extraordinary payments for specific purposes. Maxwell and Bothwell were allowed in 1517 ten marks per annum maintenance allowance for each pledge lodged with them (iii); Terreglis and Johnstone were paid a similar allowance in 1552; while Maxwell in 1522 was given a large sum to cover the expense of keeping in custody a number of thieves and robbers (iv). For a short period from 1553 the wages of the Warden Clerk of the Middle march were a burden on the Treasury, and in 1562 other officials of that March were also paid by the Crown (v); when Fernihurst was appointed in 1584, the Treasurer was to pay his clerk and other officials (vi). But these payments were exceptional and, with one exception, referred only to the Middle march; the upkeep of pledges and the salaries of subordinates were (it may be surmised) ordinary expenses of office and payable by the warden himself; as the warden

(i) The value was probably sufficient to explain, partially at least, one of Tough's dilemmas. He finds it difficult (pp.84-5), in face of the smallness of the salary, to accept Armstrong's statement (p.2) that the office of warden was coveted by Border nobles. But he has ignored this source of income from escheats - as well as the personal power possession of the office gave.

(ii) R.P.C.S., iii, p.607.

(iii) A.D.C., pp.90, 96; Ex.R., xiv, pp.285, 350.

(iv) T.A., x, p.127; Ex.R., xiv, p.459.

(v) T.A., x, p.172, etc.; ib., xi, p.111.

(vi) R.P.C.S., iii, p.700.

generally appointed his own subordinates, it is probable on the whole that they were not paid in cash but in kind. This is particularly so when the deputy happened to be, as he so often was, a close relative of the warden, or a member of his household; Henry, Lord Methven, in a letter to Mary of Lorraine in 1548, explains this type of semi-official relationship by saying "All greit men in this realm has folkis to sarve them in their own bowndis, bot ony mone bot allanerly gud tretyng and greit house to be haldin of daly expens ordynar of meyt and drynk" (1).

On the other hand, when the deputy warden was not a kinsman, but another local gentleman equal in social status to the warden, the warden might possibly have paid a salary to his deputy. This may be the explanation of an indenture signed on 23rd September, 1553, between James Douglas of Drumlanrig, Warden of the West march, and John Johnstone of that Ilk (11). This is a bond of mutual assistance between two equals, but has the additional feature, not common in such bonds, that Johnstone bound himself also to assist Douglas and "tak his plane part in the executionn of his office of wardenrie", and to pursue all criminals not only in consort with Douglas but "be himself to the punishment of the committaris of the said crymes"; for this assistance "James Douglas sall seirlie pay salary as for his office of wardenrie the soun of sax score of markis" by quarterly instalments. There is no evidence apart from this that Johnstone was in fact Douglas's deputy, but it is extremely probable that he was, in view of the extent of the duties he undertook to perform. Nor is there any direct indication that the salary to be paid was to come

(1) Lorraine Corr., p.242

(11) S.R.O., Society of Antiquaries Coll., Inv. p.9.

from the warden's own pocket; but Drumlanrig was in receipt of the increased salary and pension already mentioned, and it is unlikely that in these circumstances the Treasurer would pay this additional salary, nor is there in the Accounts any trace of such a payment.

The warden was given his power of choosing his deputies and other subordinate officers by Act of Parliament in 1449 (i) and most commissions of the 16th century reflect this; he may create "deputatos subipso in dictis officiis guardiani et justiciarie, cum clericis, sarjandis, adjudicatoribus et omnibus aliis officiaris et membris curie necessariis" (ii). All these - clerks, sergeants and dampsters - were necessary to the effective prosecution of his office, especially in its judicial aspects, while a deputy was an essential assistant in the warden's other ordinary duties.

A deputy warden could act in place of the warden in all things. He could be left in control of a royal castle on instructions of the warden, and could probably preside at a warden or justice court (iii); he could issue safe-conducts and passports on his own authority to Englishmen travelling within Scotland, and could act at days of truce in the absence of his superior (iv). In all this the warden was responsible to the crown for the actions of his deputy; but more generally the deputy would act in company with the warden. This was a responsible position and one to which the warden could appoint only a person in whom he had the greatest trust; accordingly, we find a warden would choose as deputy a member of his own family - his

(i) A.P.S., ii, p.35.

(ii) Fraser, Annandale, i, p.40 (1579); of. Fraser, Scots of Buccleuch, ii, p.204 (1551); Fraser, Douglas, iii, p.275 (1577); Annandale, i, p.65 (1597); a commission of 1454 does not mention this power (Douglas, iii, p.65.).

(iii) R.P.C.S., iii, p.79.

(iv) R.P.C.S., iv, p.41; Hamilton, i, p.79; C.B.P., i, 854. Probably with little effect at days of truce as the English warden would deal with him only through his deputies.

brother (i) or his eldest son (ii), ^f a member of a collateral branch of his family who looked to him as clan chief (iii), or a neighbouring baron tied to him by bond of manrent or a bond of assistance (iv). The iniquity as well as the usefulness of this method of appointment is apparent. But the Government seldom interfered, and then only in exceptional circumstances - as, for example, in 1542 when the capture of Lord Maxwell and the indisposition of his son made it necessary to appoint John Johnstone as deputy on the West march (†); or when, after the murder of Buccleuch, the local lairds of Bonjedburgh and Hundolee were appointed deputies in 1553 to Hamilton of Preston, the new warden, an incomer (vi). Not until 1579 was the principle advocated by Lord Herries that the Warden should be assisted by the wisest men of the wardenry as deputies regardless of any personal relationship between them, and even if some of them were at feud with him (vii). This was the germ of the idea that the warden should be supported by a council of the most important landowners in his march (viii). It is difficult to assess how long the deputy's appointment lasted - probably not beyond the tenure of office of the warden who appointed him. One of them, Alexander Hume of Huttonhall, acted

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- (i) George Ker of Fawdonside, deputy on the Middle march in 1515, was brother to Andrew Ker of Gosford, the Warden (A.D.C., p.58). Andrew Hume (1554) and Robert Maxwell (1592) were brothers of their respective warden superiors (R.P.C.S., xiv, p.122; G.B.P., i, p.395).
- (ii) John Ker, eldest son of Andrew Ker of Fernihurst, acted for his father in 1541 (Hamilton, i, pp.118-9). Also Andrew Ker of Caverton (1561) and Robert Ker (1590) (R.P.C.S., i, p.157; ib., iv, p.580.)
- (iii) Alexander Hume of Manderston (1600); Robert Maxwell of Cowhill (1578); Alexander Hume of Huttonhall, though illegitimate, shared a great-grandfather with his warden (1586) (R.P.C.S., vi, p.136; ib., iii, p.286; ib., iv, p.41)
- (iv) S.R.O., Society of Antiquaries Coll., Inv., p.9. Alexander Hume of Manderston, although related to Lord Hume by marriage, was also bound to him in manrent (H.Mss.G.R., xii, 8, p.170).
- (v) Fraser, Ammandale, ii, p.3. (vi) R.P.C.S., i, pp.137-8.
- (vii) R.P.C.S., iii, p.79. (viii) see Chap.3, Section 4, p.176.

fairly regularly on the East march from 1582 to 1594 (i); but the evidence in general shows deputies acting only for a short period of time and even for isolated instances, and it is possible that in many cases they were appointed merely to fulfil one specific duty or to act for a short time in the absence of the warden. They may also have been allotted a specific area in which to operate; in 1577, Douglas of Bonjedburgh, Deputy on the Middle march, accepted responsibility for West Teviotdale, but refused to answer to the English warden for East Teviotdale (ii).

The duties of the warden clerk were naturally more specialised. In addition to keeping all "boukis, scrollis, rollis, indentis, agrementis, bandis and utheris writtis" connected with the wardenry (iii), he was responsible for the clerical organisation of days of truce, as well as warden and justice courts, and for the receipt of complaints against those malefactors who, it was hoped, would be put on trial at these meetings and courts (iv). The importance of this official can be shown by the fact that the sudden death of one "left matters very intricate", this being used as an excuse to postpone meetings with England (v). There is little evidence relating to these clerks. Some of them combined their official duties for the warden with those of a public notary (vi), while others were personal

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- (i) C.B.P., i, 121, 986.
(ii) Fraser, Douglas, iv, pp.215-16)
(iii) R.P.C.S., ii, p.618.
(iv) ib., iii, pp.448-9
(v) C.Scot.P., viii, p.469.
(vi) Herbert Anderson, Warden Clerk on the West march in 1577, was a public notary in Wigton and Dumfries from 1541 to 1583 (R.P.C.S., ii, p.613; R.M.S., iv, 1426; ib., v, 784). John Horne, Warden Clerk on the East march in 1600, was a public notary in Eyemouth, 1589-1602. (R.P.C.S., vi, pp.150-1; H.Mss.C.R., Milne Home, pp.210, 183). Some of Anderson's protocol books have survived, and those from 1541-1550 and 1566-1569 have been published; they show no evidence of his activity as a warden clerk.

retainers of the warden (i); some had an ecclesiastical background (ii). All of them, as Warden Clerks, were dependent only on their own warden, and although continuity in this office was recognised as desirable, the council was unable to force Robert Menteith, Gosford's clerk, to serve under his successor, Fernihurst, in 1584 (iii). Except for Thomas White, who served under five different wardens on the Middle march between 1553 and 1571, they did not retain their office under a succeeding warden, and the desirable continuity was unobtainable as long as the warden had the power of appointing his own clerks.

Even less is known of the other warden officers - the sergeants. Their names - such as Adam Hainsley, John Kirkton, Patrick Bell, William Young - are local, and they were probably personal retainers of the warden. As officials of a court their functions were probably similar to those of the sergeants of a baron court, responsibility for the summoning, attachment and arrest of parties, witnesses and malefactors, and for the carrying out of the court's decision (iv); and like the baron sergeants they were probably elected in open court (v). The cases dealt with were frequently of international importance, and the sergeants possessed certain international immunities; they

(i) Robert Menteith, Warden Clerk on the Middle March in 1584, was always described as the "servant" of Ker of Gosford (R.P.C.S., iii, p.726; ib., ii, p.640; G.B.P., i, 217). Thomas Scot, Warden Clerk on the West march in 1586, is described as Johnstone's "man" (Hamilton, ii, pp.706-7; G.B.P., i, 256).

(ii) Herbert Anderson was Vicar of Keltoun and a prebendary of the Church of St Andrew of Kirkcudbright (R.M.S., v, 86, 273). Thomas White, Warden Clerk on the Middle march from 1553 - 71, may have been the Thomas White who was Vicar of Linton in 1562 (T.A., x, pp.172, 230, etc.; R.M.S., iv, 2896.)

(iii) Newbattle Mss., x, 55; R.P.C.S., iii, pp.700, 726.

(iv) Dickinson, Carmath, p.lxxxv.

(v) Maxwell, keeper of Liddesdale, created sergeants for Liddesdale in a court held at Hermitage in 1538 (Armstrong, App. xxx)

could pass freely across the border with messages to the opposite warden officials, and escorting pledges and prisoners to England (i). Often they themselves were entered in England as pledges for the warden to produce the real offender at the next day of truce, or otherwise to satisfy the English plaintiff; John Kirkton remained in Berwick for about a year on one occasion while his warden William Ker carried on litigation in Edinburgh for his relief - and within a few weeks of his release he was entered again as pledge (ii). A number of officers of this type would plainly be required in each march, and in 1561 three were active on the Middle march alone (iii).

As with the deputies, there is no evidence that the warden clerks or other warden officers were paid by the warden, although they probably received sustenance in his household. Occasionally, however, these subordinates were paid by the Crown. Thomas White, warden clerk on the Middle march, received payments at the rate of £20 per year at intervals between 1553 and 1571 (iv), which salary was raised for Robert Monteith, clerk on the same march from 1574 to 1584, to £40 per year (v). In 1578 the clerk of the West march, Herbert Anderson, also received a fee of £40. Certain of the sergeants and officers of the Middle march received fee of £13. 6. 8. from the Treasurer at various intervals between 1560 and 1588 (vi). To these - the deputies, the clerks

(i) T.A., x, p.231; C.B.P., i, p.394; cf. English "water bailiff".

(ii) R.P.C.S., iii, p.562, 623. The English wardens intensely disliked this practice of entering the warden officer as pledge and were continuously pressing for the Scots warden to enter either the convicted culprit himself or his landlord or clan chief if he could not be apprehended (Hamilton, ii, p.640; R.P.C.S., xiv, pp.132-4).

(iii) T.A., xi, p.111.

(iv) T.A., x, pp.172, 230; ib., xi, pp. 94, 111; T.A.Mss., (1569-71).

(v) T.A.Mss. covering these years.

(vi) T.A., xi, pp.12, 111; T.A.Mss., (1581-88); etc. The fees to the warden officers appear, oddly enough, under the heading of fees of Exchequer Officials.

and the sergeants - were added a dampster to declare the dooms of the warden court (i), and an undefined number of unnamed lesser officials; and with their aid the warden carried out within his march the administrative and judicial duties of his office.

4. The Keeper of Liddesdale

The wardens of the three marches were not the only Scottish officials on the border; there was in addition the Keeper of Liddesdale. Throughout the 16th century Liddesdale had the reputation among both Scots and English of being the most unruly section of the Scottish borders. Far from any adequate authority, its inhabitants could almost with impunity make frequent raids not only against the English but also against their fellow-countrymen, penetrating on occasions as far as Bishop Auckland and Richmond in the South, and the outskirts of Edinburgh in the North (ii). The loyalty of these raiders to the Scottish Crown was by no means certain; frequently they put themselves under English protection and assurance (iii), and many of their expeditions into Scotland were made with the encouragement of the English border officials (iv). Technically this difficult area was part of the Middle march of Scotland, and was so regarded by both Scots and English (v); but partly because of the "greit skayth and detriment" done by the inhabitants, and partly because Liddesdale was an independent Lordship

(i) Although the warden was given power to appoint a dampster, it seems likely that this office in the warden court was in the process of dying out in the 16th century, as it was in the sheriff court; cf. Dickinson, Fife, p. lxix.

(ii) G.S.P. (Fen), 1564-5, 1475; ib., 1569-71, 2114; G.B.P., 11, 171. Normally their raids were nearer the border - Cumberland and Northumberland were regularly attacked (e.g. G.B.P., 1, p.111) and also Roxburghshire, Selkirkshire and Peeblesshire (e.g. Hamilton, 11, pp.184, 223.)

(iii) A.D.G., p.125; G.B.P., 1, pp.169-71.

(iv) Hamilton, 11, p.213.

(v) ib., 1, pp.100-3; R.P.C.S., 111, pp.344-5.

and Regality, it came to be regarded by Scots administrators as a separate unit under the control of an official known as the Keeper of Liddesdale.

The title of this official developed in the second quarter of the 16th century. Earlier, the Earls of Bothwell, as Lords of the Regality of Liddesdale since 1491, and as holders of Hermitage Castle, the most important fortification in that area, carried out (when prompted by the Crown) the duties of the Keeper, though without the title (i). But James V found Patrick, 3rd Earl of Bothwell, to be politically unreliable and an untrustworthy administrator, and from 1532 sought to have the duties performed by royal nominees, first by a Keeper of Hermitage and then by a Keeper of all Liddesdale; and although the Lords of Liddesdale did have some sort of a prior claim to the appointment, they acted at a later date in that capacity on only a few occasions, and then as royal officials (ii). Quite often one of the wardens held the office of Keeper; it was held conjointly with the Middle march in 1551, 1581 and 1584, and with the West march in 1533, 1538 and 1554; and once, in 1562, the office was held by the warden of the East march. On these occasions the Keepership was separate from the Wardenship, and distinct commissions of appointment were issued (iii). Sometimes officials from the central government would take over the office; but they had little or no authority in the area, and with the exception of John Carmichael, who acted with a high degree of efficiency for seven years, held office for only a short time. The office was finally, in 1594, granted hereditarily to Walter

(i) A.D.C., pp.279, 311.

(ii) see Appendix 3 for list of Keepers.

(iii) Fraser, Scots of Buccleuch, ii, p.201; H.M.S.G.R., xii, 8, p.184. The commissions of Gosford (1581) and Fernihurst (1584) were, however, joint commissions (R.P.C.S., iii, pp.344, 700).

Scott of Branxholme, a local lord who had developed considerable personal power in the area.

Appointment to the office was by the King and Council in the same way as appointment to the Wardenship. In fact, the Keeper was virtually a fourth warden on the borders; the office was described as an "office of wardenry", and the Keeper was expected "to do for the cuntre of Liddesdale and inhabitantis the samin as accordis a wardane to do of his office" (i). This is confirmed by examination of a commission of appointment, which in all important respects is identical with that of the appointment of a Warden (ii). The Keeper, therefore, was an independent official responsible, like the warden, only to the King and his Council, and in no way subordinate to any other border official. The English March officials frequently lost sight of this fact, and seemed to regard the Keeper of Liddesdale as a subordinate of the Warden of the Scots Middle march just as the Keepers of Tynedale and Redesdale were subordinate to the Warden of the English Middle march; and this attitude naturally lessened the effectiveness of the office as far as negotiating with England was concerned. As late as 1575 they considered Carmichael's claim of negotiatory powers equivalent to those of a warden as peculiar and somewhat derogatory to Cusford (iii); and in 1596 the English officials still seemed to question the authority of the Keeper, although they were willing to meet with him (iv).

The salary of the Keeper of Liddesdale was considerably greater than that of the Warden. At first it tended to vary. In 1532 Sandelands of

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- (i) A.D.C., pp.426, 301.
(ii) Fraser, Scotts of Buccleuch, ii, p.201.
(iii) C.S.P.(For.), 1575-7, 279.
(iv) C.B.P., ii, 232, 239.

Calder was paid £80 per month (i), and this was increased two years later to £100 per month (ii). But by 1539 it had fallen to 40 marks per month, and to £25 per month in 1559 (iii). It is probable that these sums were reached by individual negotiation with Council and Exchequer. In the last quarter of the century the salary was stabilised at £500 per annum (iv), but it seems to have been irregularly paid (v). The Keeper also had the right of the escheats of convicted criminals within his office; but, owing to the poverty of Liddesdale and the difficulty of collecting the goods there where clan and family bonds were so strong, it is unlikely that these would amount to any great value.

Like the warden, the Keeper had the power of appointing his own deputies and other subordinate officials; and as he was frequently absent from Liddesdale, owing perhaps to his duties on another march, his deputy was responsible for the ordinary administration of the office. This Deputy Keeper of Liddesdale, known otherwise as the Keeper of Hermitage, was therefore an official of considerable responsibility and importance, and was linked to the Keeper as a warden-deputy was to his warden by family ties or bonds of manrent. Armstrong suggests that the deputy office was held by the head of the Elliots of Redheugh, implying that it was hereditary in this family; there is insufficient evidence to justify this conclusion, although Hermitage was kept by an Elliot of Redheugh in 1549, 1563 and before 1581 (vi) Against this must be set the following facts: Patrick Hepburn, a "near kinsman"

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- (i) A.D.C., p.382; T.A., vi, pp.165-6.
 - (ii) T.A., vi, p.237.
 - (iii) ib., vii, p.204; ib., x, p.409.
 - (iv) R.P.C.S., iii, pp.252, 348.
 - (v) ib., iv, pp.197-8.
 - (vi) Armstrong, p.179, App. xlix; R.P.C.S., i, p.240; ib., iii, p.347.

of Bothwell (probably uncle or cousin) was deputy in 1543 (4) and Robert Scott of Haining, Buccleuch's uncle, was deputy from 1596 to 1603 (11); Robert Johnston (1538), Andrew Ker (1581) and James Ker of Greenhead (1583) were also Deputies of Liddesdale, and were probably linked to their superiors by bonds of manrent(111). This officer was on one occasion in receipt of a salary of 100 merks annually (iv).

The Keepership of Liddesdale was therefore very similar even in detail to the office of warden of the march. But the Crown seems to have had difficulty in keeping it continuously filled. The office was disliked intensely because of its danger and difficulty; Malcolm, Lord Fleming undertook it in 1538 most reluctantly, for he considered the task impossible, and in 1589 Bothwell asserted "it was nocht possible to him to performe and cause the same be performit and kepit" (v). There is no continuous record of appointments, and this lack of continuity combined with the inability of many of those holding the office to exercise it effectively, naturally brought complaints from the English who frequently could get no redress for the activities of the inhabitants of the area.

5. Lieutenants of the Marches.

The Lieutenants of the Marches, unlike the wardens, were not regular, permanent officials of the Crown in the frontier region. Their position was, as will be seen, essentially a temporary one, and accordingly their place in the history of frontier administration was of lesser general importance; yet, in view of the fact that they held extensive, almost over-riding, powers, they cannot be ignored.

(1) Hamilton, 1, pp.457, 520. (11) R.P.C.S., vi, pp.538-9.
(111) Armstrong, App. xxx; G.B.P., 1, 103, 245.
(iv) R.P.C.S., 1, p.240.
(v) A.D.G., p.455; R.P.C.S., iv, p.432.

There were two types of lieutenant, those whose duties were primarily military, and those whose duties were administrative and judicial; sometimes, but not very often, these two categories overlapped, and a lieutenant would be appointed, as Archibald, Earl of Angus was in 1525, not only to resist threatened invasion from England, but also to maintain internal order (i). A military lieutenant was appointed either to take charge of an offensive campaign as James Stewart, Earl of Moray, was in November 1542, or, more frequently, to organise the defence of the realm, as was Colin, Earl of Argyll, in September, 1523, or Gilbert, Earl of Cassilis, in December, 1548 (ii). An administrative lieutenant, although he might be required to undertake some military actions in the course of his duties, was primarily concerned with the maintenance of law and order within the area of his jurisdiction. Antony de Labastie and James, Earl of Arran, for example, were appointed lieutenants in 1516 and 1517 respectively to restore order in the Merse, where a revolt had broken out after the execution of Alexander, Earl of Bume; while Colin, Earl of Argyll, was appointed in 1528 to expel thieves and traitors from the frontier region (iii).

In the study of border administration, we are more concerned with this second category of lieutenant. Their duties were, on the surface, similar to those of the warden - for example, they generally took responsibility for both internal and international administration; and the methods

(i) A.D.C., p.215.

(ii) Hamilton, i, p.lxxvii; A.D.C., p.181; R.P.C.S., i, p.98.

(iii) see Appendix 5 for a list of Administrative Lieutenants.

they used to carry them out were the same - days of truce, justice courts and military force. But in addition to the temporary nature of their appointment, there were two features which distinguished the lieutenants from the wardens: first, they were central, rather than local, officials of the Crown, and, in the second place, they controlled an area considerably larger than the warden's march.

As has already been observed, the wardens were generally appointed from border families of considerable local importance; the lieutenants, on the other hand, were almost invariably appointed from the greatest families in the realm - Earls of Angus, Earls of Argyll, Earls of Moray, and the heads of many other noble families undertook this task. All were men of very considerable importance in the government of the kingdom as a whole; James, Earl of Arran, Archibald, Earl of Angus and James Stewart, Earl of Moray, acted as Regents during the periods of their frontier activities; while Antony de Labastie and William, Lord Ruthven, held important government appointments, the latter as Treasurer. None of these men who undertook the lieutenancy, with the exception of the Earls of Angus and the Earls of Bothwell, who both held stretches of land in the border region, had any personal interest in the area; all were acting ostensibly in the interests of the central government. It is obvious that the council, in appointing these administrative lieutenants, was taking an exceptional interest in frontier affairs.

Although the lieutenants and wardens carried out similar duties and possessed similar powers, the lieutenants exercised them over a much wider area. Some were put in charge of the entire frontier area. In 1530, James Stewart, Earl of Moray, was appointed lieutenant of "the boundis of all the thre wardenryis foranentis Inglannd and boundis adjacent tharto"; this

adjacent territory included Lothian, Tweeddale and Clydesdale, so that this Lieutenant had control over most of Scotland between the capital and the frontier (i). In 1576, and again in 1588, Archibald, Earl of Angus, held a similar area of jurisdiction (ii). Others took control over only part of the frontier region, but their jurisdiction extended inland to the hinterland of the march and far beyond it. In 1825, for example, the Earl of Angus was lieutenant not only of the East and Middle marches but also of other areas in the South and Midlands - Clydesdale, Tweeddale and Lauderdale, with the Sherifffdoms of Edinburgh and Haddington, and Ettrickforest; while in 1523 Colin, Earl of Argyll, had Lothian, Teviotdale and the Merse under his jurisdiction (iii). Again, when James Stewart, Earl of Arran, was appointed lieutenant over the western section of the frontier, he exercised his power over the sherifffdoms of Dumfries, Wigton, Ayr and Lanark, the bailleries of Kyle, Carrick and Cunningham, and the stewartries of Annandale and Kirkcudbright - an area considerably larger than the West march (iv). There were probably two main reasons for this extended area of jurisdiction. In the first place, the problems the lieutenants had to deal with were not always confined to the frontier area; border thieves did not limit their activities to the marches, nor could a rebellion originating in the region be confined to the limits of a single wardenny. Secondly, in dealing with these problems, the lieutenant would, from the wider area of his jurisdiction, call upon much greater resources, particularly in manpower, when his task required the use of force. In general, the area over which a lieutenant could exercise his

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- (i) A.D.C., p.324
(ii) R.P.C.S., ii, p.572; ib., iv, p.111.
(iii) A.D.C., pp.215, 296.
(iv) R.P.C.S., iii, p.498.

powers seems to have been related to the main specific task he had been called upon to perform.

As in the case of the wardens, the lieutenants were appointed by the authority of the King in Council - "be the kingis grace with the avis of the lordis of counsaile"; and commissions were granted, generally under the great seal (i). Lieutenants, again like wardens, tended to 'accept' the duties placed upon them, and, occasionally, took the opportunity to bargain for favours or for adequate conditions of office. In 1530, James, Earl of Moray, demanded the lands of Ardmanoch and Glenoherry "in heritage as I sall devise", before accepting the office, while two years earlier Colin, Earl of Argyll, had insisted that his commission should be ample, and completely unrestricted, that all expenses should be borne by the government, that royal officials and artillery should be allocated to him for his use, that he should be paid the sum of £200 every twenty days, and, in general, that his power should be equal to that of the king himself (ii). The duration of the commission tended to vary. Sometimes a definite period was specified; for example the commission granted in 1584 to Andrew, Earl of Rothes, was to last for six months, while that of William, Earl of Angus, in 1598, was for one year. These could be extended, if necessary - at the end of the year Angus was reinstated in the office, this time for an indefinite period (iii). More often the period of tenure of office was

(i) A.D.C., p.387; Warrender, i, p.114.

(ii) A.D.C., pp. 296-8, 323.

(iii) Ex.R., xxi, p.500; R.P.C.S., v, p.464; A.P.S., iv, p.182.

unspecified, the lieutenant holding his office during the royal pleasure, or until dismissed by the Council. As lieutenants were mainly appointed during periods of royal minorities, they were more directly under conciliar than royal control; this implied that their tenure of office was a short one, as few of the Lords of Council could view without resentment the additional power which was being acquired on the borders by one of their number. In addition to this, the tasks specifically given to the lieutenants to perform were generally of a finite nature, whose termination could be foreseen, such as the apprehension of certain rebels or traitors, the execution of a military expedition against Liddesdale, or the holding of a series of border justiciary courts. Even when the duties to be performed were of a more general nature, some form of time limit was implicit in the commission; for example, when John, Lord Hamilton was given a very wide commission of lieutenancy in 1589 during the absence of James VI in Denmark to collect his bride, the implication was that the powers granted would terminate on the King's return (i). All this emphasizes the purely temporary character of the office already commented upon.

Armstrong was of the opinion that lieutenants received no remuneration for their services, although they received an allowance from the government for the payment of their followers (ii). When such allowances as expenses were paid directly to the lieutenant, as they often were, it becomes extremely difficult to distinguish between them and any payment made to the lieutenant in way of salary. But it is clear that there was, on several occasions at least, a salary paid, distinct from the payment of

(i) R.P.C.S., iv, p.426.

(ii) Armstrong, pp.8 - 9.

expenses. It has already been noticed that in 1528 Argyll demanded payment of a salary of £200 every twenty days in addition to the expenses of his service; there is no evidence of the payment of these sums, as the Treasurer's Accounts for this and the succeeding year are lacking, but Argyll was not demanding anything unusual or unprecedented, and it is probable that he was in fact paid. Lennox, in 1524, as lieutenant and warden of the East marches, received £50 monthly as "waigiz", and Arran, in the same office in 1517, £150 monthly (i). In 1532, Moray received £300 monthly "to mak his expenses upoun the bordouris", and it is probable that this was also a salary, or his personal expenses, separate from and additional to the expenses of the office (ii). The official expenses are generally accounted for apart from these; for example, the expenses of Arran's campaign to subdue the Merse after the rebellion there in 1517 are detailed closely in the Treasurer's Accounts, Arran's own salary forming a minute fraction of the total (iii). This conclusion, that a salary could be paid in addition to expenses, is reinforced by the fact that in 1518, when the Comptroller, Robert Barton, was authorized to coin gold unicorns to pay the further expenses of the Merse campaign, Arran was also given licence to coin some unicorns for himself (iv).

Even where no evidence exists of a direct payment of salary, it cannot be assumed that the lieutenant received no personal reward for his services. Evidence exists of direct rewards to lieutenants for their services in the shape of money and lands. In 1526, Angus received, by the

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- (i) T.A., v, pp.162-3, 237.
(ii) ib., vi, pp.151-2.
(iii) ib., v, pp.152-64.
(iv) A.D.C., p.117.

authority of Parliament, a gift of £1,600 "for his gud service maid and done apoun the bordour"; Bothwell was promised in 1529 the lands of Tantallon in feu farm; and Cassilis, a military frontier lieutenant from 1548 to 1550, was to be rewarded with "the first benefice that sal happin to walk" (i). These gifts were sometimes additional to the payment of salary; Argyll, as has already been noticed, demanded in addition to his salary, the lands of Ardmannoch and Glenoharny, while Lennox was given half the revenues of the abbey of Dryburgh, amounting to 4,000 marks, conditional on his undertaking the lieutenancy (ii). Gifts of this nature were, however, more characteristic of the first half of the century; later the method was adopted of rewarding the lieutenant with a portion of the proceeds of justice. The terms of this reward were frequently incorporated into the lieutenant's commission; for example, Ruthven's commission of 1572 authorized him to collect fines, amercements and escheats, and to apply them for his own use in recompence of his services. The commission of William, Earl of Angus, in 1598, however, allowed him to take only half of these for his own use, the remainder going to the royal treasury (iii). It is unlikely that any lieutenant of the borders throughout the century lacked the opportunity of making some personal gain out of his office, either materially in lands or money, or, more intangibly, in power and influence; the service of these men had to be

(i) A.P.S., II, p.307; A.D.C., p.302; R.P.C.S., I, p.99.

(ii) A.D.C., p.325; Hy.VIII, IV, I, 48.

(iii) Warrender, I, p.113; AMS., IV, p.171. This latter grant appears partially to contradict Godscroft's claim that Angus discharged his duties entirely at his own expense, to the total of 60,000 marks. Cf. Scots Peerage, I, p.201.

recompensed in some way.

Like the wardens, the lieutenants had authority by their commissions to create subordinate officials - deputies, clerks, dampsters and all other necessary officers of court (i); these were the assistants necessary for any official who had been granted royal justiciary powers. Except for those cases where the lieutenant's deputy was a former warden, these subordinates appear to have left little trace of their activities, as their duties, although similar in scope, were of a more temporary nature than those of the equivalent warden officials (ii). In addition to these officials, the lieutenant expected to be able to call upon the assistance and advice of the local magnates in all his activities; for example, in 1525 a number of the more important men of the Merse obliged themselves to assist Angus by apprehending certain malefactors (iii). But this assistance was not always forthcoming, for these very men were often the centres of the disorder which the lieutenant was endeavouring to control; thus, the following year, George Lord Hume and Andrew Ker of Fernihurst were regarded as traitors for their failure to assist Angus with men and personal counsel (iv). On the whole, however, the lieutenants were able to dominate the areas put under their control.

The extensive powers granted to the lieutenants, when added to the fact that their service had often to be recompensed from the gains of their office, meant that, as agents of royal and conciliar power, they were

(i) Warrender, i, p.113; A.P.S., iv, p.171; R.P.C.S., ii, p.671.

(ii) The writer has succeeded in tracing the name of only one subordinate: Robert Phillope was clerk to William Earl of Angus in 1599 (R.P.C.S., iv, pp. 838-9.)

(iii) A.D.C., p.218-9.

(iv) A.P.S., ii, p.303.

difficult to control. On the other hand, the jealousy of their fellow members of the Council, who resented the increase in power tenure of this office gave them, was often effective in preventing a lieutenant from over-exercising his power. For example, one of the factors in the utter overthrow of Angus in 1528, when his lands and titles were forfeited, was the resentment of his associates in government at his excessive border power. On other occasions it was possible for a lieutenant's commission to be withdrawn entirely; this happened in 1590 when John Lord Hamilton was dismissed from office, ostensibly for administrative malpractices (i). Removal from office was no cure for damage already done by an over-zealous lieutenant, but there did exist a form of joint responsibility, whereby other members of the council were associated with the lieutenant as advisers and equals in the exercise of his commission, particularly in its judicial aspects. Thus in 1588 Angus was expected to work in co-operation with Lewis Bellenden of Auchmoul, the Justice Clerk, Robert Douglas, the Collector-General, James Hume of Coldenknows, Robert Melville of Mardocairny, and others; and in 1584 Andrew, Earl of Rothes, was associated with William Stewart, Commandator of Pittenweem, and Alexander Erskins of Gogar, in the judicial aspects of his commission (ii). In this way it was possible to prevent a lieutenant from exercising his commission in too arbitrary a manner, or to his personal advantage. By 1599 it appeared possible for a lieutenant of the borders to act in such a manner that the royal service was efficiently carried out without antagonizing the inhabitants of the marches;

(i) R.P.C.S., iv, p.552

(ii) Fraser, Douglas, iii, p.288; R.P.C.S., iii, p.670; Ex.R., xxi, p.500

in that year the barons of the West march petitioned for the continuance in office of William Earl of Angus, after he had already served for one year, a request which was rapidly granted (i).

The lieutenants, then, were temporary officials of the central government, 'outsiders' who came to deal with specific border problems, and, the task apparently completed, returned to the seat of government. They had greater resources and power than the wardens, and were thus able to deal with the short-term problems of the frontier region quite effectively. Their arrival, on the other hand, could complicate and considerably weaken the position of the existing warden (ii) but the nature of their appointment implied that their impact on the borders was only temporary.

But this picture of the lieutenant as a more important and more powerful type of warden is not complete, and it is necessary, in order to complete it, to re-emphasise a few points. Lieutenants were most frequently appointed during royal minorities, or for a period of time when the king was absent from the country. They were always appointed from the nobility, and were generally men very close to the Crown; in a minority, for example, the Regent, already largely responsible for the government of the entire country, would also accept the office of lieutenant, while, in 1589, the lieutenant appointed during the absence of James VI in Denmark was John, Lord Hamilton, the man most likely to succeed to the throne should any harm come to the king. The powers they wielded were almost as extensive as those of the king himself; in 1528 the proclamations of Colin, Earl of Argyle, were to have effect as

(i) A.P.S., iv, p.182.

(ii) for the relationship between lieutenant and warden, see Chapter 4, section 3.

great as those of the king, and the instructions issued by Patrick, Earl of Bothwell, in the following year were to be rushed through the various soles in order to give them immediate validity (i). In a sense the lieutenants were the king; they were Vice-roys taking the place of the king and acting for him at a time when he could not act himself. For the king was himself an important feature of frontier administration, as will be seen when the impact of the central government on the borders is considered (ii).

(1) A.D.O., pp. 296-7, 307.

(ii) see Chap. 5, section 3, p.277 et seq.

Chapter 3

The Duties and Powers of the Wardens of the Marches

Although the wardens possessed a high degree of independence of action, yet, being appointed by the Crown, paid by the Crown and dismissable by the Crown, they were essentially royal officials; their powers were granted to them by the King, and they performed their duties on his behalf. For example, Cesford, as warden, was regarded as occupying the royal place and authority, and disobedience to him was characterised as contempt of the royal authority (i). Service done for the warden, actions against the warden, were for or against the King; and promises made by the warden - assurances of safe conduct and promises of specific payment of redress - had to be redeemed by the King; for the King himself "cheiflie suld be tuickeit in honnour giff the said wardanis promeis suld ony wise be violat" (ii). The wardens were responsible for their actions only to the King, and the King accepted responsibility for them; because of this each was endowed with extensive powers, both in time of war as the organiser of the first line of defence against the 'suld enemy', and in time of peace as the most regular negotiator with him.

These powers were conferred on the warden on appointment or on renewal of appointment by a commission under the great seal, which defined the duties to be carried out and the extent of the powers to be exercised.

(i) R.P.C.S., i, pp.282-3.

(ii) A.P.S., i, p.714; R.P.C.S., ii, p.357; ib., iv, p.530.

Normally it was not necessary to emphasise this point; it was probably known to all. Between 1569 and 1574, however, this identification of the Warden with the King was strongly emphasised, particularly on the Middle March, and the phrase "the King and Wardane" was frequently employed. (e.g. R.P.C.S., ii, pp.37, 119, 172) This was necessary not so much to increase the warden's authority (as it was used at other times) but to emphasise the Kingship of James VI, a minor, against the claims of his mother, and to gain support for the Regents acting in his name in a time of civil war in an area where the Marian party was strongly supported.

Examination of a number of these commissions shows that, although all were cast in a similar form, they were by no means identical; each emphasised one aspect, or two at most, of the warden's duties, sometimes to the exclusion of others equally important, according to the situation of the moment. Duties not specifically mentioned in any commission were generally covered by some phrase such as the following: "*et generaliter omnia alia et singula quaecunque alii Gardiani Marchiarum nostri regni facere seu exercere poterint faciendi*". In 1550, Buccleuch's commission as lieutenant of part of the Middle March - as was to be expected immediately after the conclusion of peace with England - emphasised negotiation with the English wardens and efficient internal administration; as full warden in the following year, possibly because of the increase of sporadic raiding on both sides, his obligation to defend the realm was emphasised, and no mention made of negotiatory powers, though naturally he still possessed them (1). Drumlanrig's 1555 commission, granted at a time when Mary of Lorraine's policy towards England was friendly, gave him powers of negotiation and redress, omitting all reference to military matters of defence (11). John Johnstone's commission, granted in 1579 at a time when the expected arrival of D'Aubigny in Scotland and open English support for the Morton faction were creating tension between the kingdoms, mentioned the defence of the realm, whereas that of his son, in 1596, omitted this subject and went into great detail

(1) Fraser, *Scotts of Buccleuch*, ii, pp.196, 204-5

(11) H.Mss.C.R., xv, 8, p.28.

on the negotiatory functions (1). In general, towards the end of the 16th century, the military functions were played down, while those of negotiation with the English for redress and maintaining internal order were emphasised (11); this reflected a general desire of the Scottish government for peaceful negotiations with England and for efficient internal administration. Taken all in all, these commissions show that the wardens had three main duties - a military duty concerned with the defence of the Kingdom, a diplomatic duty of negotiation with the English in connection with frontier incidents, and an administrative duty to maintain law and order internally. Each of these must now be examined separately.

1. The Military Duties of the Wardens

It has already been seen that at the inception of the office, the warden's primary function was military; this aspect remained of intermittent importance almost as long as the office existed, although this importance did decline considerably during the 16th century. As long as English garrisons remained in occupation of Scottish soil, it was the duty of the Scottish wardens to harry them continuously, seeking gradually to recover Scottish territory and to drive out the invaders; this task completed, and as long as the threat of English invasion remained, they still had a military role to play in defending the border from English inroads and in organising counter-offensive or retaliatory raids across the frontier.

For these military purposes the warden had at his disposal the entire military power of his wardenry. The terms of his commission

(1) Fraser, Annandale, 1, pp.40-1, 64-5.

(11) e.g. (1573) R.P.C.S., 11, p.300; (1581) 1b., 11, pp.344-5; (1597) 1b., v, p.425.

enabled him to call on "omnes et singulos inhabitantes pro defensione huius regni nostri contra veteres nostros Anglie inimicos" (i); and he may have been responsible for holding musters within the same area (ii). These powers could be reinforced by specific instructions from the government (iii). The use the warden made of these forces seems frequently to have been left to his own discretion as the most responsible commander on the spot. But the quality of these forces left something to be desired, as Major, writing about the year 1521, has indicated in an often-quoted passage; their weapons and horses being always at hand, those liable for service made for the dangerspot at the first warning under the command of their clan chief or feudal lord, and "whether in order of battle or not in order of battle" attacked at once (iv). They did not lack either bravery or eagerness; but, although it is certain that a higher degree of organisation than Major suggested did in fact exist (v), it is obvious that as a military force they were lacking in discipline. Each man looked to his immediate superior - his clan chief or his feudal lord - for his orders; but each of these, regarding himself as the social and military equal of the others, tended to follow his own counsel in the disposition of his own forces for attack or defence.

Faced with this tendency towards independent action, it was obviously difficult for a warden to dispose the available forces to the

(i) Fraser, Scotts of Buccleuch, ii, p.204.

(ii) cf. the English wardens (Coulomb, p.91). Wapinschaws in Scotland were the responsibility of the sheriffs, and the border sheriffs did carry this out; Maxwell holding a wapinschaw in 1541 (H.Mss.C.R., xv, 8, p.66) was acting not as warden but steward of Annandale.

(iii) e.g., T.A., ix, p.109; ib., x, p.360.

(iv) Major, p.29.

(v) cf. Grant, p.179.

best effect, even although he was armed with extensive powers of military discipline. The "Statutes and Use of the March in Time of War" (1) show for the 14th and 15th centuries not only what powers were required to control the warden's army but also how extensive the tendency towards individual action was. All orders given by the warden were to be obeyed, particularly the order to dismount (ii); no unit was to make independent forays against the enemy or to have independent parleys with him - in fact no person was to communicate with the English in any way without the permission of the warden. Desertion, naturally enough, was punished as treason, and should any deserter gain materially by his action, the goods thus acquired were to be escheated. The 'borrowing' of horses from comrades either in pursuit or flight, while not forbidden, was hedged around with certain safeguards to ensure the return of the animals to their proper owner. Complicated regulations concerned the taking of prisoners - for it was more profitable to capture than to slay a foe; no important prisoner was to be released to find his ransom without the warden's authority, and should a captured man later be slain, the slayer was to pay the equivalent of the ransom money to the original taker of the prisoner. Booty was to be divided out before any man left the warden's army (iii). To administer these and other regulations, the warden had his own military court where disputes about desertion, booty and prisoners were decided; and to help him in these matters he had the counsel of the eldest and most worthy borderers within his

(1) A.P.S., 1, pp. 714-16.

(ii) The order to dismount was especially important. A successful cavalry charge could be turned to defeat if in the enthusiasm of the chase the riders overshot the main part of the enemy host; on the other hand after an unsuccessful action with the horsemen in flight, the failure of all to obey this order might let pass a favourable opportunity of ambushing or rallying against the pursuing enemy.

(iii) For details on border booty see Hay.

march - although this might often have been a cause of weakness as much as a source of strength (i). In spite of these powers, the warden in practice had to rely for discipline mainly on his own personal power and personality to ensure the voluntary co-operation of the chiefs and barons rallying to his standard.

In addition to mobile forces, the warden had at his disposal the castles defending the border within his wardenry; in 1455 and 1482, when war threatened, the garrisons of all the important border strongholds - Berwick, Wedderburn, Hume, Gosford, Jedburgh, Hermitage, Lechmaben and Annan - were under the command of one or other of the wardens (ii). But only two castles on the border, Lechmaben and Roxburgh, belonged to the Crown; and Roxburgh, for a long time a thorn in the side of the Scots because of its English garrison in the time of the occupation, had been destroyed by order of the Scottish Estates. Accordingly the castles available for use by the warden, apart from those belonging to himself, belonged to individual barons of the march, and the erection of a defensive castle system implied once more the co-operation of the feudal lords of the wardenry. Should this co-operation not be forthcoming, or should the owner of any castle leave it deserted and undefended, the warden did have the power either to occupy it and garrison it with his own men, or to destroy it to prevent its occupation by the English (iii). In times of emergency these baronial castles would be furnished at the expense of the Crown, thus increasing the chances that they

(i) A.P.S., i, pp.714-16; ib., ii, p.44. The regulations as printed here date from the middle of the 15th century; but they are a compilation of earlier 14th century regulations.

(ii) A.P.S., ii, pp.45, 140.

(iii) Balfour, Practicks, p.529; A.D.C., p.385.

would be loyally defended under the warden's orders (1). But generally the wardens depended more on their own fortresses - also strengthened considerably at government expense (ii) - from which they organised defence and counter-attack; and it was these castles, occupied by a warden or his deputies, that the enemy considered to be the most important prizes, and found the most difficult to capture (iii).

The border castles were important to the warden also in time of peace as a stronghold in which to detain both thieves and pledges. This importance is shown by the fact that the Scottish government could assert that "nane will take the charge of wardenry of the Eist Marche" unless they had control of Hume Castle and Fast Castle (iv). But, in peace as in war, the warden generally tended to depend on his own castle. William Ker of Gosford, when charged to deliver his castle of Gosford to the Crown in 1591, declared that "the want thair of wilbe a grite hinder to the discharge of his office of wardenrie, seing [he] is almaist dailie burdynnit with the ressett of prisonairis quhilkis hes bene ordinarlie preservit and keipit within the said castell" (v). And other wardens too were forced to rely on their own towers (vi), for as a general rule no warden had power to use the castles of neighbouring barons in time of peace. But this rule

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- (1) A.D.C., pp. 13, 104, 388.
(ii) ib., pp.589-91; R.P.C.S., 1, p.18; Hamilton, 1, p.556.
(iii) Hamilton, 1, pp.lxix, 105, 287; ib., 11, pp.533, 560.
(iv) G.Scot.P., iv, pp.285, 596.
(v) R.P.C.S., iv, pp.585-6.
(vi) Terreglis entered prisoners into ward in Threave castle, of which he had the custody as Tutor to Lord Maxwell (ib., 1, p.336). Johnstone used his own castle of Tortherwald (Annandale, 11, p.9)

occasionally seems to have been broken on the West March about the end of the 16th century: in 1580 Johnstone as Warden had control of Maxwell's castle at Langholm; in 1597 the Keepers of Annan, Lochmaben, Langholm and Threave were commanded to open their castles to the warden for the better discharge of his commission; and in 1599 the warden was empowered to take the castles of Carlawarock, Drumlanrig and Lochwood and to garrison them (i).

Two border castles require further consideration in view of their special relationship to the wardens; these are the castles of Lochmaben and Hermitage, the custody of which during the 16th century at least belonged respectively to the Warden of the Middle March and the Keeper of Liddesdale, whoever he might be. Lochmaben was a royal castle, and was always regarded as such; but when in 1579 Lord Hereis declared it was necessary for the warden, whoever he might be, to reside there, Lord Maxwell, regarding himself as the hereditary keeper of the castle, objected strenuously, and claimed that the custody of the castle was entirely separate from the wardenship (ii). On legal documentary evidence Maxwell might have been right; for the appointments of his ancestors as hereditary Keepers of Lochmaben Castle did not mention their status as wardens (iii) and his own appointments to these offices in 1573 were made by separate commissions: Wardenship dated 26 August, Keepership 26 October (iv). Actual practice

(i) R.P.C.S., iii, pp.304-5; ib., iv, p.425; ib., vi, p.32. This may reflect a royal resumption of feudal powers: baronial castles were sometimes designated royal castles during this period, presumably on the theory that they were held by the baron on behalf of the Crown; on this assumption they ought naturally to be available for the use of a warden.

(ii) R.P.C.S., iii, pp.79, 82.

(iii) Fraser, Carlawarock, ii, pp.459-60, 471-2.

(iv) ib., i, pp.229, 230.

in the past was, however, in the Crown's favour: as early as 1456 the Keeper of Lochnaben was also Warden of the West March; in 1546 Lord Maxwell declared the possession of the castle to be necessary for the effective execution of his office of wardenry and was granted its custody; in 1553 the custody of the castle was transferred with the office of wardenry from Terreglis to Drumlanrig; and in 1577 Maxwell himself had been commanded to hand over the castle to his successor in the wardenry (i). Accordingly in 1579 the Crown had no compunction in revoking Maxwell's right to Lochnaben (ii); thereafter the custody of the castle changed hands with the office of wardenry, although Maxwell retained his claim and most wardens had difficulty in collecting rents from those tenants of the castle who supported his claim (iii). The Hermitage, on the other hand, was not a royal castle; it belonged hereditarily to the Lords of Liddesdale, the Earls of Bothwell. During the minority of Patrick, third Earl of Bothwell, the custody of the castle gradually came, apparently with little protest, to be nominated by the Crown and linked with the Keepership of Liddesdale (iv); it remained so linked until the end of the century.

The wardens of the marches therefore had at their disposal as military commanders a mobile force consisting of the men of their wardenries, a defensive castle system, and extensive powers to control both. These powers had developed in the 14th and 15th centuries when the office was primarily a military one; it remains to be seen how the military functions of

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- (i) Ex.R., vi, p.205; R.P.C.S., i, p.28; ib., i, pp.143-4; ib., ii, p.615.
(ii) R.P.C.S., iii, pp.89, 170.
(iii) ib., iii, p.216; ib., iv, p.768; ib., v, p.304; ib., vi, p.126.
(iv) A.D.C., pp. 122, 142, 382, 410, etc.

the wardens were discharged in the 16th century. It is immediately apparent that the position of warden as a military officer was considerably diminished under 16th century conditions of warfare. Both offence and defence required greater resources than could be supplied by the border sheriffdoms alone, and the control of the forces raised by this increased war effort was vested in centrally appointed commanders, military lieutenants of the marches, who either replaced the wardens or took precedence over them.

The reduced military circumstances of the warden in offence may be seen in the preparations which led to the disaster of Solway Moss. As early as August, 1542, the invasion force was being organised. The military power of Fife, Perth, Aberdeen and Banff was summoned, as well as the forces south of the Forth; arrangements were made for bringing men of the Isles across to the mainland; and transport for munitions and other supplies was organised (i). The military supplies were also ready; new guns had been cast and delivered to strategic points on the border (ii), and pikes and halberds had been stored for the footmen (iii). The wardens had no part in these preparations except in summoning the men of their own wardenry (iv); and in the first successful brush with the enemy at Haddenrig the Scots forces were commanded by the Earl of Huntly as lieutenant of the marches, the wardens of the East and Middle marches apparently acting under his authority (v). Huntly was later replaced by the Earl of Murray; and the English commander, the Earl of Hertford, believed, until he received the news of Solway Moss, that the

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- (i) T.A., viii, pp.113-14.
(ii) ib., vii, p.501; ib., viii, pp.110-11.
(iii) ib., viii, pp.119, 122, 123.
(iv) ib., viii, pp.137, 138.
(v) Hamilton, i, pp.158-9.

forces opposing him were commanded by this lieutenant (i). Knox's implication that the Scots army was disheartened by the sudden subordination to a lieutenant-general of the warden of the West March, Lord Maxwell, "to whom properly appertained the regiment in absence of the king", cannot be accepted (ii). If they were disheartened it was by the sudden appointment of a lieutenant in whom they had no faith, the king's favourite, Oliver Sinclair; for the subordination of the warden to a lieutenant was a generally acceptable state of affairs in mid-16th century conditions of warfare.

The situation was similar in matters of defence. The warden and his forces were the first line of defence, ready to delay unexpected invaders until the more cumbersome machinery of total defence was in operation. When invasion was threatened in 1523, it was the duty of the wardens and their deputies to organise a spy system over the border and to give warning of the invasion to the inland forces when it actually happened; these inland forces, subject to instant mobilisation when this warning was received, came mainly from the central valley of Scotland, and were under the control of a Lieutenant (iii). In 1532, when the Earl of Murray was in charge of defence arrangements on the East and Middle Marches, the wardens of these marches were subordinated to him (iv). It was the same in the war years of 1543-1550, and when invasion threatened in 1558; the inland shires and the inland burghs provided most of the men, money and supplies (v), the men moving to the border country on a rota system, quarter

(i) Hamilton, 1, pp. lxiv, lxxxii.

(ii) Knox, p. 86.

(iii) A.D.C., pp. 171-3. The term "inland" was technically used in this context at this time to denote places inland not from the coast but from the frontier.

(iv) ib., p. 388.

(v) for the military contribution of one burgh between 1542 and 1549, see Ayr Accounts, pp. 87-119.

by quarter, with the command vested in a series of Lieutenants, one for each quarter. It was the Lieutenants, not the wardens, who organised the main defence of Scotland in the 16th century (1).

However, the wardens' military functions were not completely lost; in 1547 the inhabitants of the East and Middle Marches were ordered to rise for defence under their wardens, and in 1544 Gosford and Hume requested information about the central plans for defence in order that they could use their own forces to the best effect and in conjunction with the central forces (11). But it is obvious that they were playing a subordinate role. In fact the Crown relied in defence as much on other important borderers - Drumlanrig, Buccleuch, Fernihurst - as on the wardens, particularly during the wars of 1543 - 50 (111). During this period the wardens proved to be exceedingly unreliable; the closeness of their lands to England made them susceptible to English influence at a time of threatened military occupation, and by the end of 1544 the heads of at least two of the three warden families were under assurance to the English Crown and active on its behalf. Lord Maxwell was assured to England in 1543 after the Selway Moss debacle (iv). Gosford sought assurance in September 1544, but did not subscribe until the end of November, when he received a sum of money from the English government; by this time, however, he had been deprived of his wardenship (v). Assurance was also sought on behalf of Lord Hume at about this same

(1) e.g. the Earl of Cassillis, as Lieutenant, proclaimed major musters on at least nine occasions in 1549 (T.A., ix, pp.273, 293, 311, 312, 318, 333, 341, 361).

(11) T.A., ix, p.109; Lorraine Corr., pp. 79-80.

(111) Drumlanrig organised the defence of Annandale in 1545, Buccleuch that of Teviotdale in 1548; Fernihurst received artillery from the government. (Lorraine Corr., pp.128, 217-8; T.A., ix, p.78). It is perhaps a significant fact that both Drumlanrig and Buccleuch were later appointed wardens. Few of the borderers were really reliable; many of them insisted on continuing their feuds even in wartime, or, like the wardens, assured themselves to the English (R.P.O.S., i, pp.22-3; Hamilton, ii, pp.531-2).

(iv) Hamilton, i, pp.367-8.

(v) ib., ii, pp.461, 516, 521.

time, but it is uncertain whether he subscribed or not (1). Gosford, with other borderers allied to him, actively assisted the English for some time; and Maxwell's political activities on their behalf and his willingness to surrender to them the castles of Lochmaben and Threave are well known (11). By March 1545, after the battle of Ancrum, both Gosford and Hume were fairly securely on the Scottish side once more; but the doubt still remained, and as late as 1548 Gosford and other borderers could be accused justly of giving active assistance to the English (111).

The diminution of the wardens' military position was therefore considerable. From being in almost complete charge of military operations and the border defences, the wardens, distrusted and often regarded as politically unreliable, had fallen to a position of subordination to a central official. The military powers of the wardens were basically weak at any time, as their effectiveness depended ultimately on the willingness of the neighbouring lords and clans to co-operate by surrendering their castles and subordinating their forces to the wardens' authority. In the 14th and 15th centuries, however, when the wardenship was exercised almost exclusively by a member of the house of Douglas whose power on the border was extensive and unrivalled, the military position of the wardens was a strong one; their personal power was sufficient to enable them both to use effectively their military authority to control their heterogeneous forces and to mould the counsel of the other borderers in the most effective way. Although each of

(1) Hamilton, 11, p.466.

(11) 1b., 11, p.389; Lorraine Corr., p.111.

(111) A.D.C., p.594; Fraser, Scotts of Buccleuch, 11, pp.185-7. It is probable that Gosford's dismissal from the wardenship in 1551 and his replacement by Buccleuch, who made these complaints, had some connexion with this suspicion.

the 16th century wardens was the most powerful man within his march, they did have rivals to their power; Gosford was continuously at feud with either Fernihurst or Buccleuch, and the Johnstones rivalled Maxwell on the West March. Their personal authority, in spite of central support, was not sufficient to create a united military organisation among their own neighbours, let alone the whole of Scotland. New conditions of warfare demanded the greater authority of a temporary centrally-appointed commander, who could control the larger forces of the inland shires as well as the borderers. Both factors, a more total form of warfare and a distribution of personal power more equally balanced among the border barons, contributed towards the decline of the wardens' position in military matters; and by the end of the 16th century their military powers were limited to the making of local retaliatory raids on their own initiative, actions often repudiated by the central government.

2. The International Duties of the Wardens.

The international duties of the wardens of the marches are those in general best known, and were perhaps the most important connected with the office. As stipulated in his commission, it was the warden's duty to arrange for "*dies treugardia cum guardianis opposite marchie Anglie pro reparatione capienda et danda secundum pactum et laudabilem ordinem proprius observatum ...*" (1). That is to say, it was the warden's duty to obtain justice and redress from the opposite official for the victims of trans-frontier raids within his march; and, also within his march, to apprehend those who had been involved in expeditions into the opposite country, and to attempt to make them return the property stolen or otherwise recompense their victims.

(1) Fraser, Annandale, 1, p.64.

For anyone suffering the inconveniences of a border foray - the burning of buildings and corn, and the theft of horses, cattle and sheep - the natural methods of gaining recompense were either to follow in the intruders' footsteps and seek by force to recover his property, or, the raiders being known, to retaliate by raiding their homesteads and stealing their goods. Following the *trod* was a legal method of gaining redress throughout the period, provided that certain formulae were followed; the pursuit had to be openly made, with hue and cry, hound and horn, and, once across the frontier, the pursuers were expected to take witness of the first person they met that they were engaged on lawful *trod*, and seek their assistance. If the pursuit was successful the offender, taken with the red hand, was summarily punished (i). Raids of reprisal, the taking of revenge, were, however, illegal unless authorised by the warden, who could not grant such permission until more lawful attempts to obtain redress had failed (ii). The only regular method of seeking redress was by negotiation through the opposite warden, who was expected to obtain either restoration of the stolen goods or recompense from the offenders. This activity implied the existence not only of a complex machinery of meeting and negotiation, but also of a considerable body of international law; the meetings were known as Days of Truce, the law as the Law and Customs of the Marches.

This border law was created partially by custom, partially by treaties agreed upon by commissioners of both countries at various stages between the 13th and the 16th centuries. The customary law has left little

(i) Leg. Mar., (1551), p.88; C.B.P., 1, 234; ib., 11, 1310. The *trod* could be either "cold" or "hot"; "hot *trod*" meant immediate pursuit, "cold *trod*" pursuit within six days.

(ii) This at least was the English legal justification for certain actions of Scrope in 1597; there is no evidence of any Scottish legal thought on this point, although they indulged in such raids (C.B.P., 11, 549). For examples of raids of reprisal see C.B.P., 1, 192, 198, 555; ib., 11, 298, 1425.

trace, but it is probable that its more important aspects were gradually incorporated within the written treaty law. By the 16th century both realms regarded the border law as being primarily treaty law reached by agreement; Howes, for example, stated it to be "grounded and taken furthe of the articles and convencions of the last treatie of peace" only (i). Yet the customary basis of the law was not forgotten; Bell, the English warden clerk on the West March realised its importance, and on certain occasions the Scots claimed that custom could override the treaty agreements (ii). With treaty modifying custom and custom modifying treaty, the border international law was far from static; it changed throughout the centuries of its existence as legal thought and practice developed, and as practical experience demanded revision of specific points. In the 13th century, for example, justice was a matter for compurgation or combat (iii); by the 16th century, while trial by oath and battle were still valid methods of judgment (iv), trial by assize was equally recognised and more frequently used. In the 14th century, since the military truces referred to the sea as well as to the land marches, the piratical activities of the seamen of both nations was a matter for redress by the wardens of the marches (v) and as late as 1512 James IV considered that injuries done to merchants at sea were redressable by the wardens (vi). But later in the 16th century, although a warden might investigate specific cases as Maxwell

(i) R.P.C.S., ii, p.523; Pease, p.61, quoting Richardson Reprints of Rare Tracts, iv.

(ii) Tough, p.95; C.Scot.P., xi, p.226.

(iii) Leg.Mar., (1249), pp.1-9 (translated Pease, pp.66-77).

(iv) Although valid, trial by battle was not always recognised. As late as 1560 the laird of Ormiston challenged his accuser at a day of truce; but this was not acceptable to the wardens (C.S.P.(For.), iii, 792.) In 1586 two families, the Burns and the Collingwoods, apparently sought justice by personal combat (C.Scot.P., viii, p.420,) but this was forbidden on both sides.

(v) A.P.S., i, p.713 shows truces referring to the sea as well as land; for an example of the redress of piracy by the warden of the marches in 1405, see Fraser, Douglas, iv, pp.63-5.

(vi) James IV, p.258.

of Terreglis did in 1565 and John, Lord Maxwell in 1577, piracy was generally regarded as a matter for the central courts of both kingdoms, and negotiation by ambassadors (i).

By the middle of the 16th century a body of international law based on custom and negotiation had been built up, and, although Bowes complained in 1552 that the laws did not provide for every contingency, it appears to have been very comprehensive (ii). It was the same for both sides of the frontier, and one of the duties of border commissioners was to collate the wardens' books of the laws to see that they conformed to the official text (iii). The subject matter of these laws falls into two sections, one dealing with the nature of the international offences, the other with the legal machinery for dealing with them. In the first category the most important frontier offences, liable to lead to the outbreak of war, were the capture of fortresses and the taking of prisoners in time of peace, and the reset in one kingdom of fugitives and rebels from the authority of the other (iv). Murder, robbery, wounding and fire-raising in the opposite realm were the basic criminal offences (v); and to these should

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- (i) For Terreglis's investigation see R.P.C.S., i, pp.336, 438, 503; ib., ii, p.636; for Maxwell's, ib., ii, pp.603-4. In Scotland the central courts dealing with piracy were the Council and the Court of Session; the Scottish Admiralty Court had little effective maritime criminal jurisdiction at this time (Curiae Admirallatus Scotiae, pp.xvi-xvii). The effective maritime jurisdiction of the English Admiralty Court dates from 1536 (J.R.Tanner, Tudor Constitutional Documents, p.346), but the English wardens also seem to have retained some of their admiralty jurisdiction well into the 16th century (Coulomb, p.34).
- (ii) Fease, p.116. Tough (pp.100 et seq.) has compiled a "pre-Elizabethan code" of laws of the marches, which he claims represents the state of border international law in 1558; this compilation is used as a basis for what follows. The earlier laws, however, have not yet been adequately studied in themselves, and Tough does not appear to have used all possible sources.
- (iii) C.Scot.P., xii, p.555.
- (iv) Leg.Mar., (1464), p.46; Tough, p.108 quoting Reprints iv; Bell Ms., f.86.
- (v) Leg.Mar., (1553), pp.112-14.

be added the offences of hunting, cutting down trees, and pasturing cattle across the frontier, and of fishing illegally in the boundary rivers, particularly the Tweed (i). The laws in the second section, dealing with days of truce, included regulations concerning perjury, the overswearing of the value of stolen goods, and "baughling"; and there was an agreement that matters of extraordinary difficulty should be referred to the central governments of both countries (ii).

Later treaty negotiations altered and added to these provisions. In 1563 (iii) amendments were made to the regulations concerning the pasturing of cattle, reset of prisoners, baughling and overswearing of value of goods; and a clause was added to create the new offence of tilling land in the opposite realm. At the same time new clauses tightened up the procedure of days of truce, by making uniform their conduct on all marches; a new method of fying bills and a method of dealing with false claims were provided, and the punishment of death was prescribed for those found guilty on three separate occasions. The new clauses added in 1597 (iv) concerned only procedure, and dealt with malicious arrest, "backbiling", the delivery to the complainant of someone other than the offender, and those cases where the person billed might be in lawful possession of the stolen goods (v). The major transfrontier offences had therefore been established by the 16th century, and subsequent lawmaking on the marches was mainly concerned with technical legal procedure and conduct.

(i) Leg.Mar., (1464, 1551, 1553), pp.51, 89, 106-7, 111.

(ii) ib., (1553), pp.115-7; Tough, p.110 qu. Reprints, iv. "Baughling" was the public reproving at a day of truce of one who had broken faith by carrying a picture or an article of clothing at spear-point; this practice was liable to lead to brawling and the development of feuds.

(iii) ib., pp.119 et seq.

(iv) ib., pp.149 et seq.

(v) Backbiling was a malicious accusation brought by a person who had been fyled, against the person of his own nation who had avowed him guilty of the offence.

This law was administered by the wardens of the marches at their meetings with the opposite wardens. These days of truce for mutual redress by the wardens of all grievances and complaints, were to be held, according to the treaties, at least once on each march every 40 or 60 days, at a place either actually on the frontier or some distance within it (i). Neither stipulation was carried out to the letter at any time, and wardens of both countries seem to have tacitly assumed the power of varying both time and place according to their mutual convenience. The weather, for example, often prevented the regularity of meeting desired by the treaty commissioners; in 1541 the wardens of the West marches agreed to postpone meetings for more than two months "because the daies ar shorte and the wedder contagouse" (ii). To circumvent this the wardens were given permission to meet at towns well within the frontier, to avoid the hardship of meeting at the frontier in the inclement winter weather, while in 1592 Maxwell suggested that all warden business, except for the delivery of offenders, should be carried out in writing through the warden clerks for the same reason (iii). Apparently there was no need, sometimes, for meetings to be held at the frequent and regular intervals demanded by the commissioners, for occasionally a warden would refuse to meet his opposite, having no bills outstanding for which to demand redress (iv). But not only the weather and the convenience of the wardens affected the frequency of meeting. The variation was considerable when one considers that in the autumn of 1586 the warden of the English East march was meeting his counterpart on the Scottish Middle march at roughly fortnightly intervals, while at the opposite extreme were the complaints that

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- (i) R.P.C.S., iii, pp.81-2
(ii) Hamilton, i, p.126.
(iii) R.P.C.S., iii, p.84; C.B.P., i, 788.
(iv) Hamilton, i, 454.

no meetings had been held for a number of years (i). Differences such as these can only be accounted for when they are considered in relation to the political and diplomatic conditions of the time (ii).

The ordinary places of meeting were on the frontier line itself, in spots readily accessible to the wardens of both sides with their followers; convenience was once more the decisive factor. (iii). Foster declared, "sometime I went to him into Scotland, sometime he to me as the convenience of the place served"; to Angus in 1528 Reddenburn was the "place maist commodious and ganand" (iv). A number of places either near the most frequently used frontier fords, or near the more well-defined routes through the hills thus came to be recognised as the official meeting-places. On the East marches, the fords of the Tweed at Norham, Coldstream, Wark and Carham were most frequently used, especially that at Coldstream, which was named 18 times between 1513 and 1603 as the place where a day of truce was held (iv). The most frequently used trysting-place on the Middle marches was Reddenburn, a tributary of the Tweed forming the international boundary near Carham, which was mentioned 49 times in the records; its popularity was due to the fact that it was convenient not only for meetings of both wardens on the middle marches, but also for meetings between the Middle and the East marches. Cooklaw^(v) Harpathgate, Gamelspath and Reidswyre, all lying on major routes through the Cheviot hills, were also sites for days of truce held on the Middle march (v). Kershopefoot, where the boundary Kershope Burn joins

(i) Hy. VIII, xiii, 1, 489 shows meetings on 11 Sept., 25 Sept., 5 Oct., 18/19 Oct., 4 Nov., 15/16 Nov., 27 Nov., 18 Dec., and on other marches and in other years with equal frequency; in 1579 Forster complained that he had had no redress for Liddesdale for five years (C.B.P., 1, 40).

(ii) see Chap. 6.

(iii) C.B.P., ii, 1003; Hy. VIII, iv, 2, 3777. 'Ganand' = fit, suitable (Craigie)

(iv) The records which mention days of truce, mainly reports of English wardens to the Privy Council, do not always specify the actual place; only places named several times have been used in compiling this list, and other places were probably used. See also map 1.

(v) See Chap. 1, p. 5 for these routes.

Liddel Water, was the usual meeting-place of the Keepers of Liddesdale and the English warden of the West march. On the West march the Lochmabonstone and Gretnakirk were the ordinary places of concourse, along with Toller Kirk, Rockcliffe, Kirkandrews and Canonbie. When it was found necessary or convenient not to meet on the frontier itself, Jedburgh, Kelso, Dumfries, Alnwick and Carlisle were the frontier towns where days of truce were held.

The entire process of giving and receiving redress through meetings of wardens of the marches falls naturally into three stages: first, the preliminary organisation of the meeting; next, the meeting or day of truce itself, where the fying of the bills took place, that is to say the giving of judgment, the declaring foul or clean, guilty or not guilty; finally the delivery of offenders, to be followed by the payment of the redress (i). All these stages could of course take place at one day of truce: bills would be fyled; delivery of offenders would be made for this occasion and for the previous meeting if any had for one reason or another been held over (ii); and the arrangements for the next meeting would be announced by proclamation. This, however, was true only when meetings were held regularly, and as the century advanced and meetings became less and less frequent, the stages tended to become increasingly separated. Arranging the day of truce became more difficult; at the very least it involved considerable correspondence, and occasionally a special preliminary meeting of wardens or deputies was required (iii). At the same time the delivery of offenders and pledges tended to be

(i) This threefold formula can be seen in operation in a letter of Foster to Douglas of Bonjedburgh in 1577 arranging such a meeting (Fraser, Douglas, iv, pp.215-6).

(ii) e.g. at Coldstream on 28 June 1537, 10 bills were fyled and delivered, and offenders in 9 other bills, presumably held over from a former meeting were delivered (Hy.VIII, xiii, 1,489.)

(iii) C.B.P., i, 105; ib., ii, 1040, 1369.

delayed, and special meetings were arranged for this too (1). Thus at least three separate meetings were required in times of difficulty to transact the business normally achieved in one.

In these circumstances the procedure involved in days of truce could by no means be stable; variations were bound to occur at different periods in the century, and minor details of business would be altered to suit the convenience of the wardens participating. Nor was there any consistency in the methods employed on different marches; for although in 1563 the treaty commissioners were disturbed by existing variations, "every Warden having a Form and Manner of proceeding different from the other", and attempted to enforce a uniform procedure on all the marches, there is no evidence of their success (ii). Accordingly the procedures described by Robert Bowes in 1551, and by the warden clerk Richard Bell later in the century differ slightly, partly because they refer to different periods and partly because they were concerned with different marches - Bowes with the East and Middle, Bell with the West; furthermore, both authors tended to idealise the situation and sought to describe an administrative efficiency which did not always exist (iii).

Yet the accounts of both are very similar, particularly with regard to the ceremony and etiquette of meeting, the giving and taking of assurance. Wardens of the marches in negotiating across the frontier were virtually acting as local ambassadors for their central governments, and accordingly had to take care that no insult should be given to their sovereigns

(1) C.B.P., ii, 1040, 1292, 1371. This phenomenon also appears earlier in the century; separate redress meetings for delivery were held in 1526, and on 27 June 1537 at Cocklaw, bills were enrolled and fyled ready for later delivery (Hy.VIII, iv, 2, 2449; ib., xiii, 2, 241).

(ii) Leg.Mar., p.146.

(iii) Bowes, "Form and Order of a Day of Truce" in Reprints, iv, quoted by Tough p.137; Bell, "Manner of holding a Day of Truce", Ms. ff.142-5. Tough in describing a day of truce (pp.137 et seq.) mixes both indiscriminately, apparently regarding the differences of time and place as of little importance, although he recognises the idealised nature of both.

and that nothing disadvantageous to their country should take place; the ceremony seems to have been developed to ensure this. First the English sought assurance and safe-conduct from the Scots warden, which being granted, the Scots sought and were granted assurance from the English; this created a public truce, the breaking of which by any individual was punishable by death. Only after assurance had been given on both sides did the actual meeting take place, according to Bell "in all friendly and orderly manner [the Wardens] mutually embracing the one the other", a friendly greeting difficult to visualise between wardens such as Cesford and Foster, or Terreglis and Daere, who were personal enemies. The receiving and granting of assurance on both sides was the only way to ensure peaceful meetings between the representatives of both countries, and this ceremony was thus of considerable value. The assurance could be, and on several occasions was, broken, but failure even to obtain assurance, as Christopher Daere failed to do at the Mote of Liddale in 1534, inevitably led to tumults and open warfare (i). Other aspects of the ceremony were less important, but failure to carry them out, or disagreement as to the exact procedure to be followed, could hold up meetings for some considerable time; as late as 1598 Robert Carey refused on several occasions to meet Robert Ker of Cesford unless Ker came to the actual boundary to meet him, in midstream if necessary (ii).

Apart from this ceremony, details of the legal procedure occasionally varied; to illustrate this and to get a clearer picture of what was involved in these international negotiations it is necessary to examine each of the three stages of the negotiating procedure more closely.

(i) A.D.C., p.422.

(ii) C.B.P., ii, 998-9.

Once the date of the day of truce had been arranged - at a previous meeting, at a special meeting, or by correspondence between the wardens - the clerical organisation of the business to be dealt with began. This was largely the duty of the warden clerks; each person "quhilk hes to do, persew, follow and defende" at a day of truce had to "roll" his "bill" before the warden clerk on a certain date (i). The bill made a specific complaint or accusation against specified persons in the other kingdom, and was generally cast in a regular form; to take an English example: "Complaineth George Coxon of the Berkhill, of John Ladlaye of Wedespindles, Davy Ladlaye called Tode's Dave, John Armstrong and Andrew Armstrong of the Harelanys, that they and their fellows did reife and take away six kine and oxen from the Berkhill in September last, and all my household stuff" (ii). If the actual thieves were unknown it was possible to bill the receivers of the stolen goods if they were known, who thus became liable for the damages (iii). Once enrolled, the bills were sent to the opposite warden, whose duty it was to cause those complained of "to be arrestit agane ye dietis of meeting", ready to defend themselves against the accusation and perhaps to be handed over to the warden making the claim (iv).

These bills were essentially claims for damages from the opposite realm, and it was necessary for the sum of money claimed to be made known. Two factors created difficulties in assessing the value; the first was the difference in value between English and Scottish money, the second the general economic phenomenon of increasing prices. The former can be illustrated

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- (i) C.B.P., i, 766; C.Scot.P., iv, p.636; ib., viii, p.154.
 - (ii) C.Scot.P., viii, p.319.
 - (iii) E.P.C.S., iv, p.206; ib., vi, p.407.
 - (iv) Hy.VIII, ii, 1,855; Fraser, Douglas, iv, pp.215-6.

by the controversy in 1562 between the wardens of the East marches; Lord Grey wished damages owed by the Scots to be paid in sterling, while Hume claimed with the support of the Scots Council, that payment could be made in Scottish money on the basis of the customary exchange rate of 4 pounds Scots to the pound sterling (i). Problems of this nature could hold up warden negotiations for some time, but it seems probable that an agreed rate of exchange existed and was used for the assessment of damages (ii).

Rising prices created a much more serious problem. The financial restitution for certain classes of stolen goods was made at certain customary fixed prices; in 1551, according to Bowes, an ox was valued at 13/4, a cow at 10/-. , etc. (iii). The value of other goods - horses, swine and household possessions - had to be declared on oath. But by the middle of the 16th century, owing to changing economic conditions, these customary values for cattle and sheep were considerably out of date, and it was in fact possible for malefactors, should they be caught, to admit the theft, pay the customary restitution, and still make a profit (iv). Two solutions were suggested to ease this paradoxical situation. Bowes wished to do away with the customary values altogether, and to substitute for them valuation on oath, on the model of the procedure for ordinary goods; the Scots Council on the other hand proposed to retain the customary values, but to force malefactors to pay

(i) C.Scot.P., i, p.606.

(ii) In 1560 the exchange rate implied that the pound Scots was worth 5/- sterling, and it was the same in 1589 (C.Scot.P., i, p.322; H.Mes.C.R., Salisbury, iii, p.421). But the rate seems to have fluctuated; in 1570 the pound Scots was possibly worth 8/-, in 1583 less than 3/- and in 1594 less than 2/3 (C.Scot.P., iii, p.341; Bowes Corr., 192; C.Scot.P., xi, p.274). By 1603, owing to continuous debasement of the coinage, Scottish money was worth 1/12th of the equivalent English unit (Stewart, p.101).

(iii) Tough, p.106, quoting Reprints, iv.

(iv) R.P.C.S., i, p.123.

"the thrie dowbills and salfer", thus making the restitution more equal in value to the true value of the goods (i). There is no direct evidence that either method was put into practice (ii), and it was not until the conclusion of the treaty of 1563 that a solution was found. A new list of values was compiled, which included not only cattle and sheep but also swine and goats, but excluded personal and household property, and, apparently, horses and corn, the value of which still had to be sworn. The new values ranged from 40/- for an ox, and 30/- for a cow, to 6/- for an old sheep and 2/- for a young goat (iii), and thus approximated more closely to the true value of the goods at the time.

No subsequent border legislation altered these values, and thus legally they remained in force until the end of the century. The value of cattle and sheep, however, continued to rise (iv), and the legal value of compensation

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- (i) "Double and Salfer" were additional payments based on the "principal" or customary price; by the English the double was regarded as punitive, the salfer as an allowance for expenses. Each was equal to the principal, and thus payment with double and salfer was threefold restitution. Later in the century there were frequent complaints of the remission of these additional payments (e.g., R.P.C.S., iii, p.82) which encouraged thieves not only because the additional punishment was remitted, but also because it increased the possible profit from the crime.
- (ii) Tough believes (p.106) that Bowes succeeded in getting fixed values replaced by sworn values, apparently basing this conjecture on the fact that the treaty of 1553 contained a clause controlling the overswearing of value of stolen goods. This clause, however, might have concerned only those goods mentioned by Bowes whose value customarily required to be sworn; the "cattels" specifically referred to were probably personal property, not beasts (see C.E.D.). Lacking more direct evidence, it is doubtful if Tough's assumption can be accepted.
- (iii) Leg.Mar., p.135.
- (iv) The extent of this rise can be shown from the tables in W.H.Beveridge, Prices and Wages in England, I, pp.30, 31. The average price per oxen rose rapidly: in the decade 1550-9 it was 54/9; 1560-9, 63/-; 1570-9, 69/-; 1580-9, insufficient figures for average; 1590-9, 108/8. Sheep values similarly rose from an average of 4/8 each in the period 1550-9 to 10/- each in the last decade of the century. These figures, referring to prices in the South of England, cannot be used directly for livestock on the borders, but they do indicate the magnitude of the rise; border prices might have been about 2/3 of those in the South. For the impact of the price revolution on Scotland, and the rise in the Scottish domestic cost of living, see Lythe, pp.109-11.

bore less and less relation to the real value of the stolen property. This encouraged perjury among the borderers in spite of the laws designed to prevent this. Claimants would increase the value of their bills, perhaps twenty-fold as Scrope stated in 1596 (i), either by declaring the numbers of cattle stolen to be greater than they were, or, in the case of horses and household goods, by swearing to an inflated value. In 1576 Morton complained that certain English borderers refused to accept the restoration of the very goods that had been stolen "sic as wanted thame rather cleaving the heigh prices that they had sworne thame unto, not the horssees and guidis thameselffis" (ii). These practices appear to have become more frequent after 1580 when prices were rising even more rapidly than before. It is possible that to prevent this form of perjury the wardens, or border commissioners, agreed that the true value of all bills should be sworn, but no legislation on the matter was made. Certainly the swearing of bills formed a more prominent feature of later warden negotiations; in July 1601, 118 English bills were sworn, some of them containing claims for the theft of cattle which one would normally expect to be valued at the customary rates (iii).

The assessment of the damages claimed in the bills was thus for most of the century an automatic matter, except for those classes of goods the value of which could be sworn on oath. Cattle, sheep and some other livestock had agreed fixed values for compensation, which could be increased two, three or even more times, either as a punishment or to relate them more closely to the true market value; the sums thus arrived at could be translated from

(i) C.B.P., II, 369.

(ii) C.Scot.P., v, p.216.

(iii) C.B.P., II, 1408.

Scottish into English currency, or vice versa, by a formula which, although occasionally disputed, was generally agreeable to both parties.

Once the bills had been presented to the wardens by the warden clerks, the actual day of truce took place when the truth or falsehood of the claims was judged. It was in the methods of making these judgments that the greatest differences arose during this century. In addition to the ancient customary compurgation by communal oath, three main methods were used at this time - trial by avowal, trial on the honour of the warden, and trial by assize. The earliest border laws provided only for clearance on multiple oath, declaring that the innocent defender "purgabit se ad Marchias cum septima manu" (i); this method apparently continued in use in the 16th century when the accused, assisted by a certain number of others possibly chosen by the aggrieved party, could swear to his own innocence (ii). The oath was an important aspect of the other forms of judgment also. In trial by avowal a countryman of the accused, apparently chosen by the accuser, was invited to declare on oath the guilt or innocence of the defendant; there was no examination into the facts of the case. Trial by the warden's honour, however, involved a certain amount of enquiry before the warden declared on his own oath the guilt or innocence of the accused; he was to "speire fyle and deliver upon his honour" (iii), and if he failed to fyle the bill one way or the other within fifteen days, he was himself obliged to pay it (iv). When trial by assize was adopted, the Scottish

(i) Leg. Mar., (1249), p.5.

(ii) Coulomb, p.69, quoting State Papers Borders xli, 1543; Tough, p.140, quoting Bell Ms., f.143v.; a version of the defendants' oath is given in Pease, p.109.

(iii) Leg.Mar., (1553) p.126; the word "swear" is used in this text instead of "speire", cf. Bell Ms.

(iv) But only the single value of the bill; if a claimant wished to obtain double and salter he had to find an avower.(Leg.Mar., (1596), p.163). When commissioners, or the Crown itself, undertook the fying of bills, they were similarly responsible only for the single value (C.Scot.P., xi, p.226).

warden chose the English jurors, and the English warden the Scots; then, under oath, the English portion of the assize dealt with English defendants, and the Scots with those of their own nationality. The usual number of the assize was six of each country, but groups of differing sizes appear to have been used; in 1601, for example, eight men of each country were appointed (i). The basic principle of these methods of judgment, whether by group oath, avowal, warden's honour or assize, appears to have been that the defendants' guilt should be determined, and accepted, by his own countrymen.

These methods did not always operate simultaneously, as sometimes one method, sometimes another, was felt to be most productive of results. At no time was the customary method of rebuttal by oath legally superseded; in fact in 1553 when the new method of fying on the warden's honour was introduced, a special clause declared that the commissioners did not intend "to make Abrogation or Alteration in the coming of the Old Laws and Customs in Filing Bills" by excessive use of this innovation (ii). But at the same time the customary method was looked upon with suspicion in view of the prevalence of perjury, so much so that in 1585 it was declared that avowal and fying on warden's honour were the "ordinarie and onlie waies of triall (iii)" and when in 1586 Foster was accused of frustrating English subjects of redress by refusing to allow the warden opposite to fyle on his honour, and by insisting on an avower, the implication is that no alternative form of judgment was recognised (iv). There seems to be no mention by the English at this time of an alternative method by assize, although in 1583 the Scots appear to

(i) O.Scot.P., v, p.193; O.B.P., 11, 1371.

(ii) Leg.Mar., (1553), p.103.

(iii) O.B.P., 1, 343.

(iv) ib., 1, 453.

regard it as available (i). The assize was, in fact, used regularly throughout the latter half of the century, from the time Bowes stated his preference for this method in 1551, for example, in 1577 and 1601 (ii).

The truth would appear to be that the wardens themselves decided to adopt whichever method was most suited to the time and case; for none of these methods was in itself continuously effective, as each was subject to serious drawbacks. The perjury which appears to have prevailed among the borderers of both countries made many declarations on oath suspect. In 1595 Eure wrote to Burghley that assizes were valueless because of "careles respects of relogione" on the part of the jurors; for the same reason a warden - particularly an English warden - would not always accept the decision made on the honour of his opposite, believing, as Bowes did, that they cherished favourites to support their political power (iii). Trial by avowal was complicated by the fact that often the avower was at feud with the person he declared guilty - and if he was not at feud before such a declaration he would probably find himself involved in one within a short time (iv). For a borderer to make an avowal was thus exceedingly dangerous; even if he escaped the blood-feud, he was liable to be involved in internal legal proceedings at the warden court, as John Edmonsteune and John Hume were, and to be found legally responsible for paying the bill he had caused to be fyled if he failed to prove the truth of his avowal (v).

Yet in spite of these drawbacks bills were continuously being fyled by one or other of these basic methods throughout this century, wardens using the most efficient way to procure convictions and to secure redress.

(i) R.P.C.S., iii, p.621.

(ii) Fraser, Douglas, iv, p.214; C.B.P., ii, 1371.

(iii) C.B.P., ii, 187, 171.

(iv) C.Scot.P., xii, p.70; C.B.P., ii, 187.

(v) R.P.C.S., ii, pp.445-6; ib., iii, pp.621, 622. For a fuller discussion of this see next section, pp.154-5.

Moreover, central commissioners and wardens appear to have been experimenting with these methods in the hope of evolving better ones. The machinery of fying on honour, for example, after its inception in 1553, varied considerably; in that year the warden had to submit his decisions to an assize of both Scots and English; in 1563, six of his own countrymen were associated with him in his enquiries; while in 1596 the warden was expected to act responsibly alone (1). This later development may have been initiated by Eire's belief that, under safeguard, it was the most effective method, the association of any assize or other group tending to decrease the warden's efficiency (ii). For most of this century, therefore, oath, avower, honour and assize were capable between them, singly or in combination, of producing satisfactory declarations of guilt or innocence.

Using these methods the wardens were expected at days of truce to judge those complained of in all outstanding bills before them, to make redress "for all offences compleyned upon to them" (iii). But this object was seldom attained, for, when, as usually happened, the bills of one country were more numerous or greater in value than those of the other country, no warden was willing to put himself in the position of giving away more than he would receive. Scrope in 1583 found himself required to give four times the redress he himself demanded, and Wharton, faced in 1543 with several demands from Maxwell, had himself no bills to present for redress (iv). Wharton sought to save face by avoiding any meeting with Maxwell; Scrope found refuge

(1) Leg.Mar., pp.101, 127, 153. The 1553 arrangement may explain why the English apparently did not recognize the assize as a separate method of judgment, regarding it as part of the process of fying on honour.

(ii) C.B.P., ii, 343.

(iii) Leg.Mar., p.125.

(iv) C.B.P., i, 183; Hamilton, i, 454.

in the illegal habit of balancing the bills. Balancing could be done by number; each side would present a certain agreed number of bills, which each warden would guarantee to deal with; in 1508, for example, the two wardens of the East marches agreed to answer sixty bills each (i). A more subtle method, and that used by Scrope, was to balance value for value; he offered "to yeld in so many byls the somme of £55 in the single value which I require you [i.e. the opposite warden] to take the consideration, so that your demand in this my delivery exceed not this value, for the unequality standeth onely in the number of the byls, myne being the more in value"

(ii). The practice of balancing bills, lest either side should lose face, existed throughout the century; thus, instead of all outstanding bills being redressed, as the treaties between the two nations demanded, only a certain number of carefully chosen bills would come before the wardens at the day of truce. The logical development of the equalisation of the value of bills was that no monetary redress should pass between the countries since the debt each owed the other was the same; the financial satisfaction of the complainers in these bills would thus become a purely internal matter, an important matter in an era of Mercantile economies. This development was in fact suggested to Bowes in 1590 by James VI, though with the additional proviso that the unbalanced bills should also be examined; but there is no evidence that this refinement of balancing bills was put into practice, although it seems an obvious method of operation (iii).

The desire of wardens to balance the values of bills was an

(i) Hy.VIII, Addl., i, p.24.

(ii) Hamilton, ii, p.707; C.S.P.(For), 1561-2, 16, appears to show an intermediate stage where both numbers and value were considered.

(iii) C.Scot.P., x, p.346; For mercantilist theories in Scotland, particularly those relating to the export of bullion, see Davidson and Gray, pp. 77-86.

important factor in international negotiation, as it could give a certain lever for bargaining whereby workable agreements were reached; although many matters were left unredressed, through balancing some bills a considerable amount of warden business could be completed satisfactorily which might otherwise never have been dealt with. A warden, appealing to the sense of gain of his opposite, might offer to give a greater value of redress in return for some other advantage; Scrope, for example, offered in 1586 to give Johnston an "advantage of overplus an hundred pound English" provided he delivered the "principall offenders complayned upon" (1). Such agreements could assist the operation of the treaties, though not in strict conformance with them. On the other hand, a warden ignoring this practice and taking a legal standpoint on the exact words of the treaties by demanding redress of all the bills could hold up redress for several months; and when for political reasons such delays were required by one country or the other, this was one of the methods deliberately employed (11).

Accordingly the wardens could exercise a certain amount of personal judgment in fyling bills. They could choose not only which of several methods was most suitable for the business currently being dealt with, but also which bills they intended to present for redress. Naturally enough this system was open to abuse, and could make for delays in justice; yet, given a degree of mutual goodwill, its very elasticity with choice of method and opportunities of bargaining gave the machinery of warden negotiation a certain effectiveness.

(1) Hamilton, ii, p.706.

(11) ib. ii, 638-9.

Whatever method was used to fyle the bills, and whether all had been fyled or only an agreed portion of them, the final stage was the delivery of those found guilty on either side and the payment of restitution. The ideal restitution was the restoration of the stolen property itself, and this was sometimes offered (i); but normally the goods were rapidly dispersed either to market or table, and restitution took the form of the payment of a sum of money as damages. The malefactors were expected to pay to their own warden the sum claimed, which, on being handed over to the opposite warden, was paid to the complainer. Although there is little direct evidence of these transactions, this process can be inferred from the following mainly negative facts. Malefactors often refused to pay for bills, and their landlords and chiefs had to act as surety for them (ii); wardens sometimes failed to make payment to their opposites for certain fyled bills (iii); wardens appear to have received money from their opposites, which they failed to disburse to those who claimed it (iv). As a guarantee that the sums would be paid one or more of the principal offenders was handed over to the opposite country, to remain imprisoned until the money was paid; if it was not forthcoming within a year and a day they were to be executed.

But it was not always possible for the warden to deliver the offenders named in a bill; they might have turned fugitive and fled to another wardenry from which it was difficult to extradite them, or they might be maintained by a powerful lord. When this happened he was authorised to deliver "such other persons as he will undertake to be sufficient for

(i) C.Scot.P., v, p.215; sometimes the restoration of stolen goods was sought by private agreement with the thieves or their lords or chiefs; but this was probably exceptional and was illegal by the treaty of 1556, (C.B.P., ii, 298; ib., i, 6).

(ii) A.D.O., p.352.

(iii) C.Scot.P., xi, p.490.

(iv) R.P.C.S., ii, pp.539-40; C.Scot.P., v, p.484; ib., viii, p.576.

the said bill" (i), that is, a pledge could be handed over redeemable only by the payment of the bill. This alternative form of delivery was used frequently throughout the 16th century, and came to be regarded by the Scots as the ordinary form (ii). These pledges were guaranteed to be worth the sum of the bill; that is, the warden, or some other landed gentleman, or even on some occasions the central treasurer, accepted responsibility for the payment of the bill should the malefactors themselves not be handed over later, or the pledge escape (iii). They were imprisoned either in official prisons such as 'Haddokkishoill' in the town of Berwick, or with private individuals - sometimes the complainer - where they often suffered extreme privation, even death (iv). The expense of their imprisonment was added to the bill and was thus to be paid by their "steilfellowis", but was usually payable either by themselves or by the warden, or, on at least one known occasion, by the Treasurer (v). They were released either by the entry of the malefactors to the opposite warden, or by the payment of the bill (vi); if this was not done the pledge was to "loke for the extremitie of the lawe" as if he had been the guilty person (vii).

The delivery of pledges instead of the principal offenders had its advantage in easing the operation of the system of international negotiation. Yet it could be abused. Daore in 1522 complained that no-one

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- (i) Leg.Mar., (1553), p.102.
(ii) Examples of the delivery of friends or servants of the warden in place of the malefactors can be found at A.D.C., p.239 (1526); ib., p.352 (1531) R.P.C.S., i, p.373 (1565); ib., iii, p.562 (1583); ib., vi, p.407 (1602)
(iii) R.P.C.S., iii, p.612; ib., ii, p.307; ib., i, p.183.
(iv) ib., ii, p.307; Fraser, Douglas, iv, pp.218-9.
(v) R.P.C.S., iii, p.563; T.A., x, p.196; ib., xi, p.108; C.Scot.P., x, p.456.
(vi) The entry of the malefactor is always regarded as relieving the pledge, e.g. R.P.C.S., i, p.373; ib., iii, p.726; ib., iv, p.262. Similarly the payment of the bill, or that part of it for which the pledge was surety, automatically implied the release of the pledge, though this was not always done. A.D.C., p.442; C.B.P., ii, 846.
(vii) C.B.P., ii, 1048.

would accept the responsibility of relieving the pledges, while in 1566 one man, Thomas Ker, was pledge to the English for no fewer than 102 bills; sometimes the Scots would deliver a pledge even when the offender was present at the day of truce and easily apprehendable (i). Thus in spite of the convenience of the method - which made it particularly attractive to the Scots - there were objections to it, and certain English wardens such as Scrope refused to accept these pledges and demanded the delivery of the malefactors themselves; this invariably resulted in an increase of tension (ii). It is not easy to accept the point of view of Scrope, even admitting the possibility of abuse; pledges were legal according to both customary and treaty law, and it must always be remembered that delivery to the opposite country was not in punishment - although it sometimes took on the character of a punishment - but as surety for the payment of the sum claimed in damages. Provided that the person delivered was of sufficient importance to his friends to make it essential that he be redeemed by the payment of the money, it did not matter whether he was the warden-sergeant or the guilty criminal.

This examination of the three stages in the machinery for seeking and giving redress on the frontier has shown how extremely delicate the negotiations could be, especially when the "delaies, evasions and subterfuges" practiced by both sides are considered. Meetings of the opposite wardens were by no means automatic, although the compilers of the treaty law sought to make them so; and, as has been seen, to arrange these meetings was often a matter of great difficulty, especially when the wardens were

(i) Hy.VIII, iii, 2, 1949; O.Scot.P., ii, p.284; R.P.C.S., xiv, p.132.
(ii) Hamilton, ii, pp.639-43, 707.

personally antagonistic towards each other, or one considered his opposite to be of inferior social status (i). Once meetings were arranged there was no guarantee that they would be held; one warden or the other was liable to 'shoot' the day of truce (i.e. fail to appear at the appointed meeting place), producing a variety of excuses or sometimes none at all; the fact that wardens performed other administrative functions for the Crown often provided a valid reason for failure to meet (ii), while sometimes there appears to have been no inclination on the part of the officials to attend (iii). Even when the meeting did actually take place the number of factors which could delay or prevent justice was almost infinite: one party might have difficulty in finding an avower, or one warden might hold up proceedings by refusing to deal with a certain type of bill; open perjury, the presenting of false bills and the deliberate billing by some people of their personal enemies, often led to the breaking of the assurance and the breakdown of the negotiations in a frontier skirmish. Differences of opinion in methods of fying bills and in assessing their values could all create problems which could lead to disturbances. Nor did the completion of the judicial proceedings imply success, for many delays could take place in the delivery of malefactors and pledges before the redress was paid. It is no wonder that the history of these border negotiations appears to be one of almost constant delay and frustration; yet this aspect can be over-emphasised, and many of these meetings did produce satisfactory justice and redress for the people of both realms (iv).

(i) The equivalence of social status of wardens was an important factor. In 1586 when Angus was appointed lieutenant and warden on the West march, James VI requested Elizabeth to appoint a noble of equal rank on the English march to meet with him. (C.Scot.P., ix, p.150). In 1543 Lisle refused to meet the Scots wardens in person "beying but meane personages" (Hamilton, 1, p.456.)

(ii) Fraser, Douglas, iv, pp.56, 106, 201; H.Mss.C.R., xiv, 3, p.34.
 (iii) Hamilton, 1, pp.77-8; Hy.VIII, iv, 1, 1448.
 (iv) see e.g. Hy.VIII, xiii, 1, 489.

3. The Internal Administrative Duties of the Scots Wardens.

It is obvious that the duties of the warden of the marches involved much more than the negotiatory task of meeting with the opposite warden for giving and taking redress; for these meetings implied the exercise of other purely internal administrative duties by the wardens on each side of the frontier to enable them to carry out their international duties effectively. The importance of these internal duties is shown by the fact that Balfour could describe 'The Dewtie and Office of the Wardane' in the following words: "All Wardanis are bund and oblist to expell all theivis, reiveris and utheris trespassouris, furth of his wardanrie and hald thame furth of the samin, and sall answer for the inhabitantis and indwelleris of the saidis boundis, and keip all and sindrie our soverane Lord's trew lieges skaithles of thame, of all harmis, reificis, spuilzies, or any uther harm or orime to be done be thame" (1). There is, in fact, in Balfour's discussion of the warden-ship no detailed description of his international functions; he appears to have regarded the office as primarily an internal one.

This overemphasis of the internal duties of the warden was essentially a late 16th century attitude to the office. In earlier Scottish commissions of wardenry the internal duties were not clearly specified, but slurred over in a vague phrase - '*ceteraque omnia alia et singula ad officium Gardiani spectancia exercendi*' (11). Some of the later 16th century commissions, on the other hand, gave considerable emphasis to the internal duties, but referred to an official called the warden-justiciar, whose duties were more extensive than those of the warden proper. This developed

(1) Balfour, Practicks, p.598.

(11) Fraser, Douglas, iii, p.65.

naturally. The warden, as has been seen, was generally appointed because he was the most powerful baron within his march, and therefore most able to carry out the international duties of that office; when another special official was required to deal with the internal administration of the same area, for which the same abilities and qualities were required, it was only natural for the second office to be given to the same person. The offices of warden and justiciar legally remained separate and distinct; the commissions mentioned them in the plural - 'in diotis officiis guardiani et justiciare' - and distinguished between warden courts and justiciar courts (1).

This development of the dual office and its contrast with the original one can perhaps best be shown by an examination of the judicial powers of the officials. The warden as warden possessed only the powers given him by international law, which could not conflict with the ordinary judicial powers of other royal officials. An Act of Parliament of 1455 stated the principle thus - "so that the warden court intromet with nathing that offers to the dittay of the Justice Air" (11). It followed that a warden who apprehended a criminal suspected of a purely internal offence could not deal with him himself, but was forced to hand him over to the competent royal official. For example, in 1516 the wardens were to apprehend those taking goods into England "and bring thar persouns to the kingis justice to be punyst tharfor"; and in 1540 Fernihurst, who had taken certain thieves

(1) Fraser, Annandale, i, pp. 40-1. Occasionally separate commissions were granted. On 21 November, 1584, Thomas Ker of Fernihurst was granted, as warden, a commission of justiciary separate from his warden's commission issued about the same time (Newbattle Mss., x, 56).

(11) A.P.S., ii, p. 43.

named Rutherford, Turnbull and Nixon, brought them "ad regis iusticiarium qui eos pro eorum demeritis ad mortem iustificavit" (i). On the other hand, the warden-justiciar, possessing justiciary powers, could take cognizance of those cases which would come before the Justice Ayre, the pleasure of the Crown; accordingly, when men within his march were accused of an internal criminal offence, he could himself "apprehend and tak their persons and do extreme justice apoun thame" (ii). The development was purely internal, and scarcely affected the wardens' international status.

From being a special office concerned solely with the international administration of the frontier and its immediate hinterland, the wardenship was brought, by mid-16th century, within the normal administrative framework of Scotland. This had its advantages and disadvantages. It avoided much duplication of administrative effort by concentrating power in one man, and thus in theory was more efficient. On the other hand, this one man, with his enhanced power, could attract against himself much more local resistance whereby his authority was weakened. In addition the warden-justiciar might find it difficult to carry out all his numerous tasks. Gosford, for example, in 1586, regarded many of his extraordinary administrative duties as hindrances to the effective prosecution of his office; he asserted that the wardenship was not burdened with "ony action criminale or civile seilffing in materis tuicheing redress of attemptatis committit to the apparent brek of the peax, in quhilk cais he is subject to apprehend fugitives for releiff of his Majestie and his realme at the handis of the opposite wardane and na uthir wayis" (iii). Gosford here was obviously

(i) A.D.C., p.69; R.M.S., iii, 2142.

(ii) A.D.C., p.141.

(iii) R.F.C.S., iv, p.46.

trying to revert to the earlier conception of his office as being concerned solely with international frontier administration; but such a conception was scarcely tenable in the late 16th century and few, if any, of the other wardens objected to the increased power given them by the justiciar's office.

The granting of both offices to the one person also led to a certain amount of confusion. It was, for example, difficult to distinguish between warden courts held by the warden-justiciar as international negotiator, and justiciar courts held by the same person as internal administrator, when the personnel of the courts, the types of cases they dealt with, and frequently even the accused, were identical (1). The confusion was increased, particularly in the earlier part of the century, by the fact that the three wardens did not always possess the additional justiciary function at the same time. It is, in effect, impossible to make general statements about the development of the warden-justiciars; for, although the earlier wardens did not possess judicial powers in internal affairs and later ones frequently did, the development of the dual office was neither continuous nor regular.

The existence of internal duties to be carried out by the warden either as warden or as justiciar raises the important question of the nature of the judicial relationships between the wardens and the other holders of local jurisdictions, particularly the lords of regality. This will be dealt with before examining these duties in detail. Sir Walter Scott believed the warden was overshadowed by the power of his neighbours in this respect; he asserted that "the Scottish wardens do not appear to have held

(1) A court held at Dumfries in 1590 was called a warden court in one source and a justice court in another; it appears to have actually been a justice court (Fraser, Annandale, 1, p.58; R.P.C.S., iv, pp. 806-7.)

Warden Courts [i.e. Justice Courts,] doubtless because the territorial jurisdictions of Sherifffdoms, Stewartries, Baillaries and so forth, which belonged to the great families by hereditary right would have been narrowed by their doing so" (i). The opening portion of this statement is incorrect; as will be shown, both warden and justice courts were held by the warden-justiciar. The final portion overemphasises the situation. Actually, his position in relation to other officials depended largely on whether he was acting as warden or as justiciar. The principle accepted and stated by the Council was that, where the matter being dealt with by the warden concerned the restitution of goods to England "quhairon peace or weir may follow", no position of privilege could counter the authority of the warden; the warden was an international officer on such occasions and was proceeding according to international law (ii). Thus he was in this respect superior in law to other local officials, Sheriffs, Stewards and Bailies of Regalities, no matter how powerful they might be in fact. This is shown by the fact that it was illegal for the sheriff to hold sheriff courts on the same day that a day of truce was being held; the international court had priority in order that all men should be able to attend it to deal with the more important business transacted there.⁽ⁱⁱⁱ⁾ But it should be noted that the court of the Justice ayre was not limited in this way, and that the wardens did in fact put off days of truce in order to attend such a court, as Cesford did in 1583 (iv).. In his justiciary capacity, the warden-justiciar would have the

(i) Scott, *Antiquities*, 1, p.xv.

(ii) *R.P.C.S.*, 1, p.439.

(iii) *ib.*, 11, p.358.

(iv) *C.B.P.*, 1, 472, 476.

position of a justiciar - superiority over the sheriff and the barons, but without power to interfere with regalian franchises. Moreover, as an internal administrative official he could be excused many of the burdensome tasks, such as the apprehension of persons at the horn for minor offences, allocated to the ordinary officers of the law as a matter of course (i).

It must be admitted, however, that this superior position of the warden in legal theory could not always be made effective in practice, and here, as elsewhere, his personal power and ability were important. For the power of the warden could be very seriously reduced by the powers and privileges of other local officials and landowners, particularly where purely internal justice was concerned. The holders of local franchise jurisdictions possessed the power of replegiation which they used against the warden as against other royal officials (ii), while local officials asserted their competency to deal with all cases within their own jurisdiction. This limited the extent of a warden's administrative competence, and affected other aspects of his power. The warden, for example, could not arrest a man dependant on a landowner without first requesting the man's master to arrest him and hand him over to justice; only if the landlord refused to do this could the warden intrude on private land to arrest the offender himself (iii). This might have been an effective provision only for the larger baronies and regalities. But when the physical area of these franchises, and the local power of some of their owners, is recollected, the extent of the

(i) R.P.C.S., iv, p.46.

(ii) see Chap. 1, pp.37-8.

(iii) Fraser, Amendals, 1, p.20; R.P.C.S., iii, pp.76, 346.

limitation thus caused to the warden's power is seen to have been considerable; this remains true even when one considers that some of the wardens were themselves bailies of important regalities (i).

By the end of the 16th century this appears to have been realised by the central government; in 1587 it made a vague and general denunciation of private courts "quhair very sendle of a lang tyme bipast hes ony justice bene ministred". A more direct method of seeking to ensure the effective operation of regalian jurisdiction on the borders had been taken in 1586 when Archibald, Earl of Angus, as Lieutenant, had been ordered to see that the bailies of all regalities held their courts after he had held his justice courts, presumably to deal with those cases outwith his jurisdiction and withdrawn to the private court (ii). A more drastic measure was taken in 1598, when Ochiltree, as Lieutenant and Warden of the West march, was authorised to hold justice courts and to administer justice without delay "notwithstanding any privilege of regality to be proponed"; only if the holder of the regality would "sit with the said Lieutennent in the saidis courtis" to see justice administered would his privileged position be recognised (iii). By associating a royal official with the franchise holder in the manner of a president of his court, his privilege was virtually nullified. On this occasion, therefore, the Crown was attempting to surmount the limitations on the wardens' powers caused by regalian jurisdictions and the right of replegiation. When James VI visited the borders in person in 1602, this attack on the regalities continued;

(i) See Chap. 2, pp.70-1.

(ii) Fraser, Douglas, 111, p.290.

(iii) R.P.C.S., v, pp.450-1.

a case tried in the court of the recently created regality of Drumlanrig was reviewed by the King and Council on the complaint of one of the vassals of the regality, a process which appears to have involved the production of the regality court book before the Council, and the imprisonment of the clerk of the court (i). In this case the Crown was exercising powers which it had always had, but which had scarcely been exercised for many years. A limitation may also have been put on powers of repledging; in 1590 Maxwell unsuccessfully attempted to repledge some men to his Stewartry court of Annandale (ii). The overall effect of such measures against regalian jurisdictions on the borders is difficult to assess; probably it did not amount to very much. But it is important to note that these measures were taken and an attempt made to curb this power wielded by private individuals; for James VI was trying to put into practical effect the tenets of his political philosophy and this fact is an important one for the administrative history of Scotland as a whole (iii). As for the borders, its effect on the power of the warden, particularly in his justiciary capacity, could have been considerable, had not the office been rendered unnecessary by the Union.

The warden-justiciar's position in relation to neighbours and officials was therefore legally of great strength. In practice it could be weakened considerably; yet, by the end of the 16th century, the central

(i) R.P.C.S., vi, p.472.

(ii) Fraser, Annandale, i, p.58.

(iii) Basilicon Doron, i, pp.88-9.

government had gone some way towards the elimination of some of the forces creating this weakness.

There remain to be seen exactly what were the administrative duties of the 18th century warden-justiciar within his own march. They can be divided into two main groups, those concerned with his international functions as warden centred mainly on the warden court, and those more general administrative duties of the justiciar centred on the justice court. To these categories must be added a third, the miscellaneous duties imposed on the wardens by the central government. Each of these must now be examined in greater detail.

a). Internal duties concerned with days of truce and frontier control.

The most obvious tasks facing a warden after a day of truce were to apprehend those who had been fyled, to collect the sums of money owing in damages, and to disburse to claimants the money received in damages from the opposite warden. This last was by no means difficult, and this action seems to have left no record - except when it was not performed (1). But neither of the former was an easy task. The malefactor was certain to be maintained either by a landlord or his clan chief who, although legally accepting the responsibility under the general band for presenting him to justice, would normally defend him from the consequences of his misdeeds (11). It was thus extremely difficult for the warden to apprehend the person fyled in the bill unless he was friendly or connected with the malefactor's lord or leader, or sufficiently powerful to dominate him completely; only through force or influence could any lord be persuaded to surrender his man

(1) R.P.C.S., 11, pp.539-40.

(11) for the responsibilities of landowners under the General Band, see Chapter 5, section 2a, pp.253-4.

to the warden for delivery to the English - and influence was the more effective. This explains the necessity for a warden of the marches, in addition to his legal superiority, to be powerful and widely connected in kinship and by bonds of manrent within his march; an outsider could scarcely achieve any results except with considerable military power behind him.

But, as has been seen, the delivery of the principal offenders was not always necessary, provided another human pledge had been given for the payment of redress. The really important matter was the collection of this money from those guilty of the exploit across the frontier - or from someone else on their behalf. For this purpose, the administration utilised the social organisation of the borders, and the undoubted strength of social links. Landlords and clan chiefs were legally responsible under the General Band for the payment of damages incurred by their dependants; and, especially if they had given surety or caution, pressure could be brought to bear on them rather than on the malefactors themselves. If they failed, their own goods were liable to be impounded to pay these damages; to escape this landlords often caused their goods to be "sparfallit and devidit in the handes of sindre personis, be quhem thay ar alsua ressekt and kepit, in defraude of our Soverane Lord" (1). The theory was that, if one of the offenders had been delivered to the English wardens, his lord or his companions would eventually pay for his relief as a result of this legal pressure; and similarly if a pledge had been delivered, his friends, or the warden himself, would pay the damages. The plaintiffs across the frontier would thus be satisfied.

(1) R.P.C.S., iii, p.414.

Payment of redress depended ultimately on the effective administration of the General Band and the strength of kinship ties.

The matter, however, did not end there. The offender who had been delivered for the bill and on whose behalf the damages had been paid, was not the only person responsible for the action for which damages had been claimed; it was thus natural for him to seek some financial relief from his companions in crime. This was one of the functions of the warden court, that those so delivered "may haif thair relief aganis thair steill fallowis"; (1) there the financial responsibility was apportioned out legally, and he who had paid the bill could claim shares from the other malefactors involved, presumably in an action for debt. In much the same way, if a pledge had been delivered and later redeemed by the warden or his friends, those who had paid sought repayment from those actually guilty of the bill, or from those responsible for them; this again became an action for debt. These legal actions, although originating in an international transaction as a concern of the warden, were purely internal matters, and although they were in the first place conducted in the warden courts, the tracing out of the involved tangle of the debt could involve baron courts, sheriff courts and even, on appeal, the council itself (11). The warden was thus involved in proceedings at many courts locally; and if, as sometimes happened, the receivers of stolen goods, who were often men living at a considerable distance from the frontier, had been billed and fyled, the warden might be forced into legal actions at distant courts before he could either

(1) R.P.C.S., 1, p.373.

(11) In the baron court of Linton, in 1536, Stein of Dagleis was ordered to pay Wille Wreech 23 English groats for his part of "the prensapall and sairfyr of ij sowis" (Dackinson, Carnwath, p.186). For appeals to council see Chap. 4, Section 2, p.216.

apprehend his sulprit or obtain the financial restitution (i).

For legal business directly connected with frontier matters, the warden had his own warden court. The origins of the court, like those of the office itself, were military (ii); but with the decline in importance of the warden's military functions the court became more legal and administrative in character. In the transition period such courts were held for the punishment of thieves and those guilty of certain treasonable activities such as unauthorised contact with the English enemy (iii); but by the 16th century they were connected more directly with the happenings at days of truce. That there was a close connection between days of truce and warden courts is shown by frequent commands to the warden from the central authorities to hold both (iv).

The court has already been seen in operation apportioning the fractions of bills to be paid by each individual of the group which had carried out the foray. It also served as a court where appeals could be heard against allegedly false avowals. Many of these appeals were malicious 'backbilling' of the avower, but genuine reasons for appeal did exist; a fyled person could appeal against an avowal if he was at feud with the warden, or if he had been absent from the day of truce at which the avowal was made against him. The procedure in these cases was the same; the person fyled had to give surety that he would pay the bill and relieve the person delivered on his behalf, before the warden court was

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- (i) R.P.O.S., iv, p.206.
(ii) see Section 1 of this chapter; A.P.S., i, p.716.
(iii) A.P.S., ii, p.144; Fraser, Douglas, iii, p.453.
(iv) e.g. A.P.S., ii, p.220.

'set'. The matter at issue was then examined by an assize which either confirmed or rejected the fying done at the day of truce. If the person fyled failed in his appeal, the terms of his surety operated and the bill was paid; but if, as sometimes happened, he succeeded, the person who had avowed him guilty of the crime became legally responsible for the payment both of the bill and the expenses of the pledge who had been delivered for the offence (1).

It is probable that other matters came before the warden court, and other types of appeal came to it from days of truce, but they appear to have left no trace. When, however, it dealt with cases affecting days of truce, the principle on which the court operated is clear. Payment of the bill which had been fyled against the Scots had to be guaranteed or paid by one party before the case was heard, in order that, no matter what the outcome was, the financial liability admitted by the Scots warden to the English should be covered, and eventually handed over. The warden court, therefore, could not annull any fying made at a day of truce; it could only transfer the guilt and liability for payment of the damages from one party to another. Nor were its proceedings above suspicion of malpractices; like sheriff and baron courts, it sometimes acted with a certain lack of impartiality, and few wardens were guiltless of acts of favouritism to their retainers.

Certain other duties carried out by the warden were connected with his international functions; these were related to frontier control,

(1) R.P.C.S., iii, pp.621-2; the possibility of an appeal against an avowal, and the subsequent financial responsibility, troubled many of those Scots willing to make avowals against their countrymen, although they could make a counter-appeal to the council; this, along with the possible threat of a feud, made it difficult for the English wardens to find Scots avowers for their bills.

and were mainly concerned with the issue of passports and safeconducts to travellers. This duty, too, originated in the military character of the office, for the warden had had power, in time of war, to give licence to Scots to travel into England, and to Englishmen to enter Scotland; this power was retained in the 16th century and was used especially at moments of international tension. The passports were granted not only to those making short journeys across the frontier "to Kirk or Market", but also to merchants and shipwrecked mariners involved in longer journeys (i). The appointment of a new warden on the Scots side of the frontier annulled the safeconducts granted by his predecessor in office, making it necessary for new ones to be obtained (ii). Entry permits were granted only to Englishmen who had already received an exit licence issued by the English warden, or a higher authority, and it was a serious matter for a Scots subject to attack any Englishman bearing such a passport (iii). Another duty of wardens in times of tension was to "appoint watchis in everie his passage and diligentlie serche and gif attendance quhat personis owther passis in Ingland or commis thairfra toward this realme" (iv); this was a form of frontier control difficult if not impossible to carry out owing to the large numbers of routes to be guarded.

b) Internal administrative duties as justiciar.

In his capacity as a royal-justiciar, the warden possessed the powers of criminal jurisdiction attached to the Justice Ayre, which had been forbidden to the warden by the Act of 1455. Specifically, he could apprehend

(i) A.P.S., II, p.44 (1455, c.4,5.); A.D.C., p.33.

(ii) A.D.C., p.387.

(iii) ib., p.369; A.P.S., II, p.144 (1483, c.6.); R.P.C.S., IV, p.41.

(iv) R.P.C.S., I, p.383.

and try those accused of theft, slaughter, murder, rape, arson or any other form of oppression; and, towards the end of the century, the further capital crime of witchcraft was added (i). In general, he had power to take action against any offence contrary to the law of Scotland, except treason. Some warden-justiciars possessed further powers; for example, both Carmichael and Maxwell were given by their commissions such extraordinary judicial authority that the inhabitants of the West march were provoked to complain to the Council (ii). Carmichael in fact, additional to the power to hold justice ayres, had been given authority to grant respites for capital crimes, a power which was "propir onlie to his Majesties self" and which had been possessed by no previous warden, although commonly held by Lieutenants.

This judicial authority was exercised in the warden's justice court. These courts, although it is known that they were held, have left no record of their activities; but there is no reason to suppose they differed in any way from the justice courts held by any other royal justiciar with equivalent powers during the 16th century. It is probable that the warden-justiciar was expected to hold them fairly regularly - as often as necessary, according to the majority of commissions; but their frequency may not have been so great as necessary or as desired by the central government, for in 1581 Gosford was ordered to hold them four times yearly on specified dates, on the first day of February, May, August and November (iii).

To the judicial functions of the warden-justiciar, there must be added certain internal extra-judicial tasks imposed on him in his capacity of

(i) R.P.O.S., iii, pp.448-9; ib., v, p.425.
(ii) ib., iv, p.580; ib., v, pp.39-40.
(iii) ib., iii, p.346.

justiciar. These are the duties regarded by Balfour as of such great importance in the extract from the Practicks already quoted. Balfour divides the warden's duties as justiciar into two: the expulsion of all fugitive malefactors from the area of his jurisdiction; and responsibility for the actions of all inhabitants of the same area, including the general maintenance of good order among them. Admittedly the task of expelling malefactors from the wardenry was one which concerned him in his capacity of warden as well, for the reivers complained of by the Scots were the very same men as those who made their forays into England, and the warden, acting as justiciar, was acting against the very same persons as the warden in his capacity as controller of the frontier. But it is obvious that Balfour regarded the duty as primarily one attached to the justiciar's office.

Those criminals who could not be brought to justice in the court of the warden-justiciar were to be actively repressed by him. This principle was stated by the council in 1582 in the following words, although action had been taken in conformity with the principle prior to that date; "besydes the ordinar forme of pursute be justice necessar it is that sum force be alsua preparit and direct for repressing of sic as sall absent thameselffis fra justice and be declarit fugitives efter the saidis courtis" (1). Force was essential to deal with those who did not recognise the authority of the justiciar, and its use was intended to be thorough. The fugitive was to be expelled utterly from the wardenry, his goods impounded, his house burnt, his holding of land given to another, his wife and family expelled also, all this with the object that he should have no place of refuge in the area (11).

(1) R.P.C.S., 111, p.498.

(11) A.D.C., p.259; R.P.C.S., 111, p.332.

The power to take these drastic measures was usually given to the warden-justiciar in his commission (i), but it could be emphasised and amplified by additional special commissions (ii). Each warden had the power to call upon all the inhabitants of his wardenry to assist him in this act of repression (iii), and on occasions the wardens would join together to deal with a specially troublesome area such as Liddesdale (iv). On many occasions, as will be seen, the warden-justiciar's power of repression was reinforced by armed expeditions organised by the central government. It is doubtful how completely effective these measures were; even if the warden did have the inclination and the physical power to carry them out, the result could at best be only temporary because of the social conditions of the frontier districts - kinsmen or lord would receive the fugitive with his wife and children, maintain him, and supply him with some form of livelihood.

Responsibility for the actions of the inhabitants of his march could be a heavy burden for the warden. It involved not only the duty of doing justice in his own justice court, but also that of apprehending any evildoers for appearance in other royal courts; possibly it also involved financial responsibility should damages be claimed against any of them in any court (v). In general he was to cause good rule to be established and kept within his jurisdiction. Fortunately he could shed some of this responsibility by 'taking good order'. He could charge "disorderit persones to compeir afor him for taking suirtie of thame for gude rowle and alawa for taking and geving of assurance or to find suirtie for keping of our

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- (i) e.g. Fraser, Annandale, 1, p.40.
(ii) R.P.C.S., iii, pp. 332-3.
(iii) Balfour, Fracticks, p.599; Fraser, Scotts of Buccleuch, ii, p.204; Newbattle Mss., x, 56.
(iv) R.P.C.S., 1, p.499.
(v) Fraser, Annandale, 1, p.21.

peace" (i). That is to say, potential malefactors themselves gave surety to the warden to keep the peace; and he had the power to attempt to mollify the feuds which were the principal causes of the disturbance of that peace. Legally this shifted some of his responsibility to the inhabitants of the march themselves. The warden could also make bands or agreements with certain landlords within his jurisdiction whereby they accepted the responsibility of handing over their tenants to justice; and he could take pledges from the heads of clans and surnames that their followers also would keep the peace (ii). The warden was in fact responsible only for those individuals for whom he could not persuade any other person to accept responsibility.

This taking of order within the march was often a feature of the justice courts held by the warden-justiciar. At these courts surety was given to him, landlords accepted the responsibility for their tenants, pledges were taken and agreements reached over feuds. For example, Johnstone accepted responsibility for his men at a justice court held by Carmichael in Dumfries Tolbooth in 1590; and Herries, in 1600, at a warden (i.e. justice) court at Kirkcubrecht, dealt with a feud which was developing between the Laird of Apilgirth and the Johnstones over the death of a member of the Johnstone clan (iii).

But, although some of the extra-judicial functions of the warden-justiciar did take place in his justice court, thus implying that this court, wherever it was located, was the administrative centre of his wardenry, it

(i) Newbattle Mss., x, 56; R.P.C.S., iii, p.345. For the full implications of 'taking order', including methods of taking bands and pledges, and dealing with feuds, see Chapter 5.

(ii) A.D.C., pp.90, 251; Balfour, Practicks, p.598-9; R.P.C.S., iv, p.109.

(iii) R.P.C.S., iv, pp.806-7; Fraser, Annandale, i, pp.69-70.

is obvious, from the apparent infrequency of these courts, that most of the justiciary duties of the warden- like his international duties - were carried out on the move, throughout the entire area subordinate to his jurisdiction.

c) Miscellaneous administrative duties.

Throughout the 16th century the Scottish central administration imposed additional duties on the wardens of the marches almost entirely unconnected with their positions as international administrators or as internal justiciars - a variety of miscellaneous functions legal, economic and religious in character.

The warden was expected, on being charged by a central court or the council, to see that the legal decisions of that court concerning the area of his jurisdiction were enforced, by the parties concerned. Hume in 1536 was ordered to besiege the tower of Cockburnspath to enforce a legal decision of the King's Advocate, and only desisted when orders countermanding this were received from the council; in the same way Maxwell was charged in 1576 to see that a certain kindly tenant remained in possession of his lands in face of an attempt by his landlord to remove him (1). The warden might also be required to see that certain preconditions of a trial be carried out before the trial commenced; in 1565 Maxwell of Terreglis was commanded to see that a certain defender restored goods he was alleged to have stolen before the case was decided by the Clerk Register and the Advocate (11). In the same way the warden would be commanded to apprehend specified criminals or rebels living within his march required for trial by the central government.

(1) A.D.C., p.450; R.P.C.S., 11, p.541.
(11) ib., 1, p.345.

Maxwell, for example, was asked in 1533 to apprehend one who had been obstructing royal treasury officials; Hume of Wedderburn in 1580 to capture those involved in a certain murder; and Ker of Gosford in 1593 to present before the council those who had assisted Bothwell and other traitors (i). The warden could in fact be commanded to do any miscellaneous task - to protect people from the ravages of a feud, to escort important personages from one spot to another, and even to issue licenses for hunting (ii).

Wardens had been expected to carry out certain economic functions from quite early in their history. In 1371 they were ordered to prevent Scots horses from being sold in England; and similar commands relating to other commodities - coal, salt, hides, skins, cloth, sheep and cattle, all important articles of Scottish trade - were often made (iii). When a reason is given for these commands, it is that export of these commodities would cause dearth in Scotland. The economic condition of Scotland, dependant almost entirely on local raw products, the supply of which was subject to violent fluctuations, caused it to suffer severely from periodic famines; and even at the best of times the central authorities were concerned to create an abundance of supplies for home consumption rather than to encourage any export trade (iv). These directions to the wardens must therefore take their place as part of a conscious attempt on the part of the Scottish government to regulate trade in the best interests, as it saw them, of the country. Effective action generally appears to have been taken to implement these

(i) A.D.C., p.408; H.M.S.S.C.R., Milne Hume, p.50; R.P.C.S., v, pp.71-2.

(ii) R.P.C.S., ii, pp.115, 506; A.D.C., p.91.

(iii) A.P.S., i, p.547; ib., ii, p.290; ib., iii, pp.426-7; A.D.C., pp. 69, 367, 369; R.P.C.S., i, p.114; Grant, p.328.

(iv) Grant, pp.552, 355-6.

regulations and it is probable that to the Scots government this economic duty of preventing the export of basic Scots commodities over the land frontier to England was by no means the least important of the warden's functions. But this was undoubtedly a difficult task, largely because of the multitude of routes available to the merchant and smuggler; the warden was encouraged to be as efficient as possible in this duty by the grant of a portion of the value of any goods impounded "pro suo labore".

Religious duties did not become a part of the warden's functions until after the Scottish reformation. Few of the wardens were zealous adherents of Protestantism; the Cesfords and Johnstones, for political reasons, found it expedient to give the Kirk their support, but Maxwell and Herries were active Roman Catholics, while Hume appears to have been undecided which form of religion to support. The government, while not demanding from the wardens at any time complete conformity with the established reformed religion, did demand, when its interests required it, the suppression of the more active adherents of the Roman religion, in particular the Jesuits, within the border region, and at least an outward show of conformity. Herries, in 1584, in spite of his Catholic sympathies, undertook to prohibit the saying of mass within his wardenry, to apprehend Jesuits, and in general to prevent anything "that may be prejudiciall to the christeane religioun presentlie professit within this realme", and he promised that he himself would "repair to the kirk for heiring of the sermonis" (1). Provided some such provision was made and enforced, there seems to have been little objection as far as the government was concerned to Roman Catholic wardens. But it was the

(1) R.P.C.S., iv, pp.258-9.

warden's duty, no matter what his religious affiliations, to apprehend politico-religious offenders against the authority of the state: Gosford, in 1593, was ordered to arrest John Ker of Hirsell for "his filthy crime of adulterie", while his son in 1601 was to bring Peter Nairn to trial "for his abhominable atheisme" - both of which charges obscured other criminal and political activities; and, again in 1601, all the wardens were commanded to keep a sharp lookout for the notorious John Ogilvie of Powrie-Ogilvie, a confidential agent of James VI in his negotiations with the Catholic powers whom he disowned on occasions (i).

Towards the end of the century, both countries, by now firmly confirmed in their Protestantism, appear to have developed the theory that much of the border turbulence was caused by religious malcontents, particularly in Northumberland and in Dumfriesshire. The 1596 treaty therefore contained a provision that both countries should encourage the expansion of the reformed religion in the border area by the provision of ministers (ii). No attempt was made to implement this on the part of Scotland until 1602, when, because the inhabitants of the West march were "voide of the feir and knowlege of God and consequentie of that dew reverence and obedience quhilk they aucht to his majestie and lawis", the warden was ordered to cause the churches of twelve parishes within his march to be "redefineit and biggit up" (iii). There is no evidence to show how effective this international social experiment was in quieting the frontier, but it is possible that the

(i) R.P.C.S., v, p.81; ib., vi, p.226; H.M.S.C.R., xiv, 3, p.35.

(ii) Leg.Mar., p.151.

(iii) Fraser, Amundale, i, pp.71-2.

extension of these religious ideas was a factor in the post-Union pacification of the region.

These miscellaneous duties given to the warden could have been carried out equally well by other officials; this is shown by the fact that in many instances the sheriff was to be associated with him in their execution (1). The warden, however, always seems to have been regarded as the superior official, and it is obvious that by the central government he was considered to have been not only a frontier officer carrying out highly specialised duties but also a general internal administrative official of some consequence.

4. The Resources of the Wardens.

The wardens' commissions have been examined to show what duties they were expected to perform; it remains to be seen what resources they had at their disposal to enable them to carry them out.

That the warden required physical powers to carry out his duties was recognised by those responsible for drawing up his commission. He was given power, in the first place, to recruit assistant officials - deputy wardens and others - for whom he was responsible (11); by carefully choosing individuals for these subordinate positions from his own and neighbouring families a warden could materially increase the extent of his power. For his main source of physical power the warden was in general encouraged to seek local co-operation in all his activities rather than to request the use

(1) A.D.C., p.412; R.P.C.S., 11, p.116; ib., v, p.81; H.Mss.C.R., Milne Hume, p.50.

(11) see Chap. 2, Section 3, pp.83-90.

of any special coercive forces, which would have to be supplied - and paid for - by the central government. The warden was therefore empowered to call upon all the inhabitants of his wardenry, when he required them, "pro persecutione ... diutorum furum ... equitare et progredi ...", and to attend him at days of truce (i). It was the gentlemen of the locality who were expected to hound thieves and outlaws from the wardenry, to attend the warden in his courts and at days of truce, and to support him generally in all his actions, particularly in making their men available for justice. This service was laid upon the inhabitants of the marches by "the ancient and lovable customs of the Bordouris", in many cases reinforced by the form of tenure of their land (ii); to these were added the injunctions of Acts of Parliament and the direct commands of the Council, made known to them either by local proclamation or by personal letters (iii). Sometimes the warden's power to "convocat" the lieges was reinforced by additional special commissions; Johnstone, for example, was empowered to summon these forces in 1585 to subdue Maxwell and suppress his supporters with "fyre, sword, and all kind of hostilitie" (iv). In theory, therefore, the warden had the physical support of the entire loyal male population of his wardenry.

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- (i) Fraser, Scotts of Buccleuch, ii, p.204; Fraser, Annandale, i, p.65.
(ii) R.P.C.S., v, p.374; ib., ii, pp.541-2. This was a form of kindly tenancy; the lands of the Abbey of Jedburgh at Canonbie were held by the service of accompanying the wardens of the West march at days of truce, and for the defence of the realm.
(iii) A.P.S., ii, p.45; R.P.C.S., iii, p.169; ib., i, pp.283, 300.
(iv) ib., iii, p.746; cf. ib., v, p.137.

The resources of local co-operation could be effective to a certain extent, but this assistance was not always forthcoming; the warden was in fact frequently thwarted in the execution of his duty by the failure of the lords and barons of the neighbourhood to support him as they were required to do. When, in 1526, Angus, then virtual ruler of the entire country, was warden of the East and Middle marches, Hume and Ker of Fernihurst, the two most powerful and influential men within his wardenries, failed to co-operate with him in any way (i); and when one of the lesser local magnates was warden, many of the lords and barons within the march would absent themselves from warden courts and days of truce, fail to present their men to justice or accept responsibility for paying the damages they had incurred by their misdeeds, and, in general, obstruct him in carrying out his duties (ii). The motives leading to this blatant lack of co-operation, although impossible now to determine for each instance of failure, were probably a general disregard for those in the locality invested with royal authority, coupled with a great respect for ties of kinship and the social links between a baron and his inferiors; to these should be added, in many cases, a personal dislike for the warden - perhaps the most powerful reason of all when the extent and virulence of feuds are recalled.

The social and administrative problems created by feuds in general have already been fully discussed (iii). When one of the parties to the

(i) A.P.S., ii, p.303; see Chap.6, section 1, pp.341-3, for the political implications of this action.

(ii) H.Mss.C.R., xiv, 3, p.31; R.P.C.S., ii, pp.357, 421; ib., iii, pp.236, 404; ib., vi, p.395.

(iii) see Chap. 1, pp. 19-22.

feud was a local administrative official these difficulties were increased considerably; that official became a suspect judge in all cases where his personal enemy, with his friends, tenants and kinsmen, were concerned. Thus the existence of a feud between an individual and a royal official was, throughout all Scotland, regarded as a legitimate reason for the withdrawal of that individual from the jurisdiction of the official. For example, when an individual was at feud with a sheriff, exemption from the jurisdiction of that sheriff was granted, which generally included his friends, relatives and other associates; other arrangements were made to deal with cases in which the exempted persons were involved - the appointment of a particular and unsuspect judge or deputy, the transference of the case to a neighbouring sheriffdom, or even before the Lords of Council themselves (i). This exemption lasted only as long as the feud remained active, and this legal recognition of the feud generally implied that some measures were being taken to resolve the difficulties between the parties (ii).

On the borders, where feuds were more frequent and more vigorous than inland, the wardens, being for the most part border landowners themselves, were almost continuously involved in local feuds. As has already been observed, the Maxwells and the Johnstones on the West march were at feud throughout the second half of the 16th century, while the feuds between the Kers of Gosford, the Scotts of Branxholme and the Kers of Fernihurst involved these families in internecine warfare for the entire century. These were feuds on a grand scale, and naturally seriously diminished the

(i) Dickinson, Fife, pp. xxvii-xxviii.

(ii) see Chap. 5, Section 2c, pp. 268-70.

power of the wardens involved; but even lesser feuds affected the warden administration in a similar way - Thomas Kirkpatrick of Closeburn, in a complaint to the Council, asserted that he could not accompany Maxwell to days of truce, or even meet the warden, without his whole kin to protect him, "quhairupoun", he sagely prophesies, "sum grite inconvenientis will not fail to fall oute" (i). In such circumstances, as in the case of shrieval jurisdiction, the party at feud with the warden was temporarily withdrawn from his jurisdiction until the feud was legally resolved; this was in fact the result of Closeburn's complaint to the Council - he was exempted from Maxwell's jurisdiction both as warden and as justiciar.

In order to obtain this exemption, those at feud with the warden had first to make application to the Council, at the same time finding sufficient surety to make themselves answerable to the law; this surety had to be given, and registered in the Council records, before the exemption was granted (ii). Exemption was thereupon granted in a letter under the privy seal, outlining the causes of the feud and defining the extent of the exemption; "we be our auctre royall haif exemit ... the saidis andre ker of phairmyhirst ... [and his kin, friends, tenants, etc., all specified] ... fra the said Wardane principall, his sone and deput ... and all utheris their deuttis and substitutes present and tocum, their offise officiarius and iurisdiction, and fra all esemperance before thame in any of thair wardane courtis and utheris thair courtis quatsoever ... for quhatsoever cause and occasion ... bygane or tocum ..." (iii). Should the persons to whom such

(i) R.P.C.S., v, pp.88-9.

(ii) ib., iii, pp.347, 631.

(iii) Newbattle Mss., xi, 56 (December 1590).

an exemption had been granted thereafter violate the law in any way, this did not imply that they escaped punishment; it merely meant that they were to be judged by some official other than the warden-justiciar, in fact, an unsuspect judge. In 1529, for example, when the Johnstones alleged Maxwell "to be suspect to thame in sik matteris", Maxwell was ordered by the Council "to mak ane unsuspect deput. undir him in the materia ... sa that of resson salbe na occasion of complant" (i). This was perhaps not regarded as a completely satisfactory method, for towards the end of the century those at feud with the warden were tried by representatives of the central judicial organisation; in 1582 the Lord Justice Clerk and other legal members of the Council attended a justice court held by Gosford to deal with cases in which Gosford himself was a suspect judge, and this was not the only occasion on which they did so (ii).

This form of exemption appears to have applied particularly to the courts and jurisdiction used by the warden in the course of his internal duties. But those exempted were equally entitled to freedom from suspect warden interference in any international affair in which they may have become involved. It is possible that when legal officials were sent by the central government to the frontier to be present in a supervisory capacity at days of truce, one of their duties was to see that justice was done to those at feud with the warden (iii). Another method used to ensure that justice was not interfered with was to withdraw them also from the warden's international

(i) A.D.C., p.303.

(ii) R.P.C.S., iii, p.449.

(iii) for details see Chap. 4, section 2, p.210.

jurisdiction, and to grant to the most important of them power to meet with the English warden to give and take redress on behalf of those so exempted. Thomas Ker of Fernihurst was granted this form of exemption from Gosford's jurisdiction in September 1584; he was "exemit ... fra our said wardane his iurisdictione, wardane courtis, meittingis and daies of trew ... with power and full libertie to the said Sir Thomas ... to convene and meet at daies of meeting with the wardane of england ... and mak redress for his persones committeris of ony wrakis ... within his boundis and offices" (i). Other examples of this form of exemption appear to have existed; in 1600 the English warden met with Andrew Ker of Fernihurst, who had been exempted from Gosford's authority again some three years previously, as though with a warden to do justice for those within his charge (ii). And it seems probable that, when in 1519 the Council withdrew from an earlier Andrew Ker of Fernihurst the power to "mak redress for his folkis and tak redres" in order that the warden, Andrew Ker of Gosford, might exercise his office within the full bounds of his wardenry, Fernihurst had been granted a similar form of exemption on the grounds of a feud with Gosford (iii).

This form of exemption, including as it did the granting of positive powers, does not appear to have been frequently made, and only, apparently, in special circumstances. In 1584, when Fernihurst received the exemption quoted, Gosford's power was on the decline, and Fernihurst's star, owing to his relationships with the faction then in power, in the ascendant; Fernihurst in fact supplanted Gosford as warden two months later, although

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- (i) Newbattle Mss., x, 51.
(ii) C.B.P., 11, pp.471, 700.
(iii) A.D.C., pp.132-3.

Gosford resisted this trend of events valiantly and attempted to get this exemption quashed (i). The exemption, too, with its positive powers, was often very difficult to operate. It was an easy matter to meet the English warden and negotiate successfully with him; in a report to his government, the English warden stated that in his meetings with Fernihurst during this period he was "as sufficiently satysfied by him as I have herstoaffore bene by any other that hath had charge in any the marches of Scotland" (ii). But it was a very different matter when it came to the internal administrative organisation which we have been to lie behind the days of truce. The exempted person with his powers of international negotiation had no power to hold the equivalent of warden courts, no legal power, that is, to insist on the delivery of malefactors and the payment of damages, or to apportion the financial responsibility among the individual thieves who had admitted to committing the offence; only by his personal influence and by the extent of the regard in which those for whom he was acting held him, could he hope to carry out these functions effectively. Fernihurst, within a month of his exemption, was complaining to the Council that the guilty men he had entered prisoner to the English could "haif na releif of the remanent personis foull in the same billis" and consequently would either have to pay the entire sum of the bills themselves, or remain in England in captivity, perhaps to suffer death. The only remedy the Council could provide was to charge those delivered to England to "mak faith" with their "pairtenaris and steilfellows ... of the quantitie of every manis part", and to order these payments to

(i) Newbattle Mss., x, 53.

(ii) ib., xi, 48.

be made (i). This was scarcely an adequate substitute for legal apportioning by a warden court, and it is probable that for this reason this form of exemption did not work with complete effectiveness.

A warden involved in a feud was nevertheless, through these exemptions from his authority, deprived of a considerable portion of his physical resources and judicial power. This, along with the other deficiencies in local co-operation already mentioned, made it necessary for the warden to rely almost entirely on his own personal power, and, as a natural corollary, to increase this personal power as far as possible, not only for its own sake but also that he might carry out his administrative duties as efficiently as possible. The most potent method of doing this was to supplement the links of kinship and marriage, the basic sources of power, by bonds of manrent. These have already been described, as has the extensive empire on the West march built up by Robert 6th Lord Maxwell during his tenure of the wardenship (ii). His sons, Robert 6th Lord Maxwell and John Maxwell of Terreglis, later Lord Herries, both wardens of some ability, used similar methods of building up their power (iii); while on the East march and in Liddesdale, wardens and keepers extended their power in exactly the same way (iv). This personal link between lord and man, especially when the 'man' brought with him the power of his own kinsfolk and friends, was the most effective method of ensuring the local co-operation necessary to enable the warden to carry out his duties.

Another important method used to increase personal power was for the warden to persuade as many inhabitants of his march as possible to

(i) ib., x, 52.

(ii) see Chap. 1, p.18.

(iii) Fraser, Caerlaverock, ii, pp.474-8, 478-9.

(iv) H.M.S.C.R., xii, 8, p.170; Fraser, Scots of Buccleuch, ii, pp.254-5.

undertake a specific band to assist him in carrying out his duties; this was in addition to the existing obligations already mentioned. These were personal contracts between the warden and the subscribers, who acted either as individuals or as leaders of a lesser power group, and thus differed from the general and specific bands, shortly to be described, between the government and these same inhabitants of the march (1). But inasmuch as these warden's bands also bolstered up the administrative as well as the personal power of the warden, they received the support of the central government. The warden appears to have drawn up a form of agreement whereby the subscribers pledged themselves to assist the warden "in geving of ovr advise and counsaile or with ovr forces in persute or defense of the saides thevis ...", and then collected signatures to it. Thomas Ker of Fernihurst did this early in 1585, shortly after he became warden, receiving the voluntary signatures of Buccleuch, Rutherford of Hundolee, Douglas of Bonjedburgh and many others; some inhabitants of the Middle march, such as John Granstoun and John Mowe of that ilk, "alluterlie refusit" to subscribe, whereupon Ker 'took instruments' to that effect (11). This recording of the refusal was the only step he could take; apart from the personal discomfiture which he might be able to inflict on those who resisted his authority he had no legal power to compel signatures to such personal agreements. Yet these personal bands were quite frequently employed: the heads of most of the clans of East Teviotdale subscribed bands in favour of Archibald Earl of Angus when he was Lieutenant of the Middle march in 1576, obliging themselves "lelilie and trowlie [to] serve and obey ... [him] in the avancement and furthsetting of our soverane lordis service ..."; and in 1599

(1) see Chap. 5, section 2a, pp. 252-4.

(11) Newbattle Mss., ix, 72, 77; ib., x, 58.

certain Armstrongs and Elliots, heads of their clans, subscribed similar bands to Buccleuch as Keeper of Liddesdale (i). Although both were essentially personal links between the warden and the subscriber, these bands of assistance must be distinguished from bonds of manrent; manrent was designed purely to increase the personal power of the warden in all ways, official or otherwise, while the bands of assistance were essentially to increase his administrative power on behalf of the Crown.

The wardens were actively encouraged in this building up of personal power by a central government which saw in the creation of these personal empires of powerful individuals the only real guarantee that any form of administration would be effective in the border area. It is significant to note in this connection that when in 1551 the Middle march was divided, Walter Scott of Branxholme was given administrative powers only over that area "in quhilk ... his freindis, servandis and tennentis duellis" (ii). The wardens' effectiveness depended on his personal power, the power of his friends and the extent of his sphere of influence; and he relied on his friends for men, material and advice. This was a far cry from the ideal situation where the warden could rely upon all Earls, Lords and Barons within his wardenry "to furthsett and advance his Majesties service be thair presence, advise and counsall for the honoure and commonweill of this realme" (iii); yet it was obviously more efficient for such aid and advice to come wholeheartedly from a relatively small group of well-disposed land-owners than grudgingly from all. Complete efficiency, however, could come

(i) Fraser, Douglas, iii, pp.272-3; Fraser, Scotts of Buccleuch, ii, pp. 255-9.

(ii) Fraser, Scotts of Buccleuch, ii, p.196.

(iii) R.P.O.S., ii, p.357.

only when the group assisting the warden included, in addition to the wardens' friends, those of his enemies who controlled the pockets of resistance to his authority, when personal differences would be submerged in the interests of authority and good order. This ideal appears to have been recognised by Lord Herries in 1579 when he asserted that five or six of the wisest men of the country should be chosen to act as the warden's deputies; these were to include at least two men at feud with the warden (1). From this principle grew the idea of a nominated council of barons acting on the West march to assist the warden.

This Council appeared towards the end of the 16th century, but only on the West march; and it was the result of the peculiar situation which had arisen on that march where no one baronial family was sufficiently strong to dominate the others. It is perhaps seen in action in 1579 and 1599 when the warden is apparently acting "be advise of the baronis of the cuntrey" (11); but the full extent of the council and the duties of the counsellors are not made clear until a record of 1602 is examined. In November of that year there were appointed to assist James Johnstone as warden, seven landowners of the West march - Herries, Kirkpatrick of Closeburn, Murray of Cockpool, Jardine of Apilgirth, Grier of Lag, Carruther of Holmendis and Johnstone of Newbie. These appointments were made in Council, although it is not quite clear whether the men were nominated by the warden or by the Council. These men, or a quorum of four of them, were to assist the warden by their advice and counsel in "the haill affairis of his office being of any wecht or importance"; and, more than this, they

(1) R.P.U.S., 111, p.79. Herries was under the impression that Maxwell would be chosen warden, hence he designated the official 'Stewart' [i.e. of Annandale], and included two members of the Johnstone family in the group of deputies. Herries himself, not Maxwell, actually became warden, but this does not affect the principle he laid down.

(11) 1b., 111, p.233; 1b., vi, pp.31-2

could "direct thair advise at all tymes to his Majestie and Counsaile what they think maist expedient for the continewing of quietnes upoun that Bordour" (1). This direct approach to the King would seem to imply the circumvention of the warden in certain cases, presumably where he had rejected their advice. The warden's council of barons would therefore appear to have had a considerable amount of control over his actions; and, assuming this control to be effective, the warden would be able to rely completely on the resources both moral and physical possessed by his advisers. This move by the central government, although partly forced upon it by the situation on the West march, was an attempt to lessen the personal power and administrative responsibility of the warden and at the same time to increase his administrative resources beyond the extent attainable by the exercise of his personal power alone.

From all this it is obvious that the resources available to the wardens of the marches for carrying out their duties was defective both from the local point of view and from that of the central administration. Physical power depended almost entirely on the personality and ability of the warden; it could be extensive, yet it was frequently nullified by the violence of personal feuds. It would appear that the central government, towards the end of the 16th century, was attempting to overcome these difficulties, at least on the West march, by creating a baronial council which would ensure physical support for the warden in all his activities; but there is little evidence of the effective operation of this innovation, and the efficiency of the warden administration depended, at the end of the 16th century as at the beginning, on the personal power and influence of the warden himself.

(1) R.P.C.S., vi, p.829.

Chapter 4

The Council and the Wardens

It was only natural that the central government should take a continuous interest in the Borders in spite of the existence there of officials with the wide powers and important functions of the Wardens of the Marches. The border country was an extensive portion of Scotland, and its inhabitants were of considerable political importance to the Scottish government not only because of their possible influence on the internal affairs of the kingdom, but also for the part they could play in influencing, for better or for worse, relations with England. For this reason alone one would expect those in authority to keep a watchful eye on events to the south of Edinburgh; but further factors made it necessary for the Crown to take care that the situation on the borders was a favourable one, and in conformity with the general control policy of the time.

First, the wardens were not always reliable officials. They could not always be trusted to follow any particular royal policy since, like all other Scots gentlemen of the 16th century, they joined with all their power and resources in the faction quarrels of the nobility which constituted the politics of the time. This allegiance to faction was frequently detrimental to a warden's allegiance to the Crown, especially if it had involved him in a feud with other border gentlemen. Furthermore, their very closeness to the frontier made them most susceptible to the continuously active influence of English agents, especially at times when English invasion threatened danger to their lands and heritage; as has already been seen, this would be a matter of grave importance to the Scottish government, particularly in time of war (1).

(1) see Chap. 3, section 1, pp. 117-18.

In addition to this, the wardens could not always be relied upon to carry out their ordinary tasks. They sometimes failed to keep their appointments with the English wardens, or failed to carry out their special internal administrative duties, often for what seemed, to the central government, to be trivial personal reasons - although these same reasons were equally often of considerable importance in the light of the wardens' position in border society and the social responsibilities attached thereto. Most serious was a tendency for wardens to absent themselves from their marches; for example, Gosford remained in Edinburgh throughout the winter of 1576-7 and was not available for border meetings throughout that period (i). Sometimes this absence was occasioned by pressure of other public business; or by 'mistakes' of the central authority - as when Arran, in 1523, commanded Gosford to carry out his frontier task forgetful of the fact that Gosford had been ordered into ward for a civil offence (ii). But more often absence was caused by personal affairs and pleasures, "pairtlie be the solistatioun of their awin freindis and familiaris, and pairtlie for the furtherance of their awin particular effairis". Since the wardenship was regarded by the Council as a "greit and cummersum office" which required the entire attention of the warden, the wardens were repeatedly ordered not to leave the bounds of their marches on any pretext, or at least "verray sendill [to] be furth of that cuntrie" (iii). But this was a precept difficult to enforce.

Nor could the wardens always be relied upon to co-operate with each other. Generally it was desirable, from the point of view of the

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- (i) Fraser, Douglas, iv, p.218.
(ii) A.D.C., pp. 159-60.
(iii) R.P.C.S., iii, pp.82, 567-8.

Scottish central authorities, that the three wardens and the Keeper of Liddesdale should combine together to present a united front to the English officials. The ordinary administrative system provided for this both in its international and in its internal operation. Since the border raiders used the whole frontier area for their operations, thieves resident within the jurisdiction of one warden often passed through the march of another in the course of their activities - perhaps deliberately, in order to complicate any proceedings which might later be taken against them. In such cases it was generally the warden through whose territory the thieves had entered England who was billed for the offence, who had to enter pledges to England from among his own men, and who ultimately had to arrange for the handing over of any recompence. The procedure he followed in this was to request the neighbouring warden, within whose march the suspected criminals dwelt, to arrest them on his behalf and to hand them over to him for presentation at the next day of truce on his own March. This was sometimes followed: Gosford, in 1561, employed his forces in arresting men resident within the Middle march for presentation to the English by the warden of the East march, Lord Hume (1). More often it was not followed: in 1534, and again in 1543, Gosford was unable to obtain the co-operation either of Maxwell or of Bothwell, Keepers of Liddesdale for the time, in apprehending inhabitants of Liddesdale for whom he had pledged his own men at days of truce (11). In much the same way, wardens were expected to co-operate for the repression of internally troublesome areas, particularly Liddesdale, using the forces of the entire borders to subdue

(1) A.D.C., pp. 311-2; R.P.C.S., i, p.168.

(11) A.D.C., pp. 431-2, 529.

rebellious subjects and bring them to obedience (i). Always they were expected to co-operate in their attitude towards the English. Occasionally, joint days of truce would be held; Maxwell, warden of the West march co-operated with Lord Fleming, Keeper of Liddesdale, in this way in 1535 (ii). Occasionally the wardens met together, or corresponded with each other, in order to formulate an agreed policy: Maxwell, Fleming and Gosford were ordered to meet for this purpose in 1536, and discussions between wardens were arranged in 1579; Maxwell and Fernihurst corresponded with each other in 1541 (iii). But the rarity of recorded examples of any of these forms of co-operation implies that very seldom did the wardens combine of their own accord to follow a united policy towards England, an implication reinforced by the fact that individual wardens were often at feud with one another, or allied to opposing political factions. This encouraged the English wardens considerably; Wharton noted with enthusiasm that there was "grete displeasour and no love" between Maxwell and Fernihurst, and, believing the Scots negotiating strength to be diminished by this fact, sought to encourage the disharmony between them (iv).

Finally, the authority of the warden was not complete within his march. As has been seen, exemption could be obtained from it by anyone at feud with the warden. But more than this, the warden's internal administrative authority, extensive though we have seen it to be, was almost completely incidental to his duties in connection with such international problems as a breach of the border laws or some other form of frontier incident, unless he had been given the additional powers of jurisdiction

(i) R.P.C.S., i, pp.499-500; ib., iii, p.746.

(ii) T.A., vi, p.265.

(iii) ib., vi, p.266; R.P.C.S., iii, p.700; Hamilton, i, pp.114-5.

(iv) Hamilton, i, p.102.

necessary for the ordinary internal administration of the area. These powers were frequently given to the 16th century wardens, increasing their status to that of warden-justiciar (1); but the extensive use the wardens made of them was always subject to abuse. Accordingly further measures were very often necessary beyond the wardens' powers of justiciary, to keep unruly inhabitants under control and provide more equitable justice for purely internal matters of dispute; the onus of this fell upon the central organs of administration, and the manner in which they undertook it will be described in the following chapter.

The fact that the efficiency of the warden administration of the border region depended ultimately on the personal power and influence of the warden himself, was a source both of strength and weakness. The power of each individual warden enabled him to carry out his duties more effectively. But it attracted the antagonism of some of his jealous neighbours who, by combining together, could nullify that effectiveness. The increased power sought by the warden to combat such combined action against him also could enable him to defy the central authority and repudiate its policy.

This raised two related but diametrically opposed problems for the government in its relations with the wardens: to what extent was it necessary to implement the wardens' power to ensure efficient administration in the face of local resentment; to what extent was it necessary to control the wardens in the exercise of their personal power on behalf of the government. For a strong central government with a definite policy towards England, it was essential to solve both these problems in such a way as not to jeopardise that policy. A very delicate balance was required: too little assistance

(1) See Chap. 3, Section 3, pp. 144-6.

prevented the warden from doing his duties effectively, while too much might give him the opportunity of acting independantly; too little control could have the same result, while any attempt to impose too much control would almost certainly drive him into open antagonism.

1. Governmental Assistance to the Wardens.

English wardens, from at least the time of the Pilgrimage of Grace, were encouraged not only to send regular reports both to the Privy Council and to the King's Secretary, or to the King himself, but also to seek instructions and advice concerning the administration of their marches and the conduct of frontier affairs. They were therefore in the habit of regularly requesting central assistance and advice on almost all matters they dealt with, both important and trivial. Wharton, in 1541, believing he could attract to the English Crown the allegiance of certain inhabitants of Liddesdale, sought permission to do this and instructions as to the best method; Scrope, in 1583, requested military reinforcements, the warden across the frontier having just received some from the Scots Government; in 1587 Scrope again sought advice from Walsingham on whether to interfere in the Maxwell-Johnstone feud (1). The Scots wardens were not, as a rule, required to submit regular reports to the Crown as their English counterparts had to do. It was not until 1679 that the suggestion was made that they should have some person, presumably a member of the council, to correspond with, to give reports to, and to receive instructions from; this was followed up in 1687 by a command to Cesford to "advertise with all diligence" the

(1) Hamilton, i, p.132; C.B.P., i, 153, 481.

results of days of truce "to our Privie Counsell ... and ressiive directione frome thame" (1). There was a certain amount of correspondence between the government and the wardens throughout the 16th century, but it was neither so intensive nor so regular as that on the English side of the frontier (11); and for most of the century there was no vital necessity for the Scots wardens to make reports, nor to seek instructions and advice on ticklish problems unless they themselves wished to do so. Since governmental assistance, material or verbal, was not generally given to a warden except at that warden's own request, this fact had a considerable influence both on the quantity of such assistance and on its type; wardens on the whole tended to make use of all resources at their disposal before appealing to the government, a tendency the government was willing to foster.

Yet there were difficulties which cropped up in the exercise of their office which the wardens might well feel ought to be referred to the Council, and when this happened it gave the council an opportunity of intervening much more closely in border affairs than normally. The wardens' appeals to the Council may be classified into three groups: appeals for elucidation of points of policy or interpretation of treaties; appeals for a legal decision in matters where the wardens had met some difficulty in the exercise of their office; and, perhaps most important of all, appeals for some reinforcement of their powers over the more unruly inhabitants of their wardenry.

An example of the first group may be found in the four articles placed before the Council in March 1552 by Walter Scott of Braxholme; the

(1) R.P.C.S., iii, p.82; C.Scot.P., ix, p.477.
(11) See below, section 2, p.201.

three major problems contained therein show the type of decision a Scottish warden felt he was unable to take on his own initiative (i). Scott required first of all a decision on what was to be done with a man who "wilfullie perjuris and manswaris himselff" at days of truce; such perjury occasioned great delay in justice, holding up negotiations between the wardens on both sides, and some drastic remedy was required. This problem had exercised the minds of the English wardens too, and in 1541 Radcliffe had sought instructions from his government on this very point (ii). Scott's second problem was created by the economic tendencies of the 16th century, already discussed; for although the borderers did not realise why prices were rising so considerably, they did take advantage of the phenomenon. As has already been observed, redress for cattle and other goods stolen from across the frontier was made according to certain fixed values; these were now so much out of date that it was quite profitable for a thief to admit his theft and obviate the consequence of his crime by making what had become a merely nominal restitution, and Scott required instructions on this point. The third point concerned the interpretation of a clause in the recent peace treaty relating to slaughter and mutilation. The Council suggested answers to all these problems in the presence of the other two wardens, and these decisions were to be "haldin as law in tymes cuming" by all the border officials provided they were acceptable to the English wardens. As they involved alteration of the border law, solutions of these points were discussed by Border commissioners and incorporated in a treaty the following year.

(i) R.F.C.S., i, pp.123-4. The fourth article was merely a request for permission to postpone for a short time demands for the ransom of prisoners of war.

(ii) Hamilton, i, p.139.

A warden who was an 'inland' person and who had therefore had little experience of border conditions and even less knowledge of border law and custom would naturally seek the assistance of the Council in such matters more frequently; such a warden was David Hamilton of Preston, who in 1553 required elucidation of many fairly ordinary points of procedure (i). To prevent constant reference to the Council on such trivial matters, however, an inexperienced warden would be required to appoint experienced borderers as his deputies; for Preston the Council chose Nicholas Rutherford of Hundee and William Douglas of Bonjedburgh as deputies, and in 1580 when the inexperienced George Hume of Wedderburn had been troubling the government on ordinary routine matters, he was requested to "use the advise of the gudeman of Hutounhall and sic utheris as ar best experimented, quhar ony difficultie appearis" (ii). The implication behind this is that except in cases of extreme difficulty or importance, the warden was expected to use his own knowledge and initiative in the furtherance of the royal service.

Legal matters brought before the Council by the warden were few and not very varied. John Johnstone as warden of the West march brought a case against the Provost and Bailies of Dumfries, who had imprisoned an Englishman despite the passport and safeconduct issued by the warden (iii). But this type of case was uncommon; more frequently the legal matter brought by the warden was to enable him to take legal action to recover money he had paid

(i) R.P.C.S., 1, pp.137-8.

(ii) H.Mss.C.R., Milne Home, p.50.

(iii) R.P.C.S., 111, pp.590-1. Johnstone lost his case; the Council had instructed the people of Dumfries to apprehend the Englishman, and such instructions apparently outweighed a warden's safeconduct.

out in the execution of his office. In entering a pledge to the opposite warden for payment of a bill by an offender, a warden would frequently bind himself to pay the bill should he fail either to collect the money or apprehend the offender; or, should he have received an English defaulter and released him for any reason before the English had paid redress to the Scots complainer, the warden was obliged to pay the money himself. In these latter circumstances, as the complainer was a Scot, the warden was liable to have his own goods pointed should he default in the payment; this happened to Cesford in 1566 (i). There are numerous examples of the former type, mainly from the Middle march, which involved the warden in legal proceedings to recover his money. For example, in 1583 Cesford himself paid £68 sterling to the English warden for a bill, which sum he was subsequently unable to recover from the guilty party; he sought Council authority to enforce repayment (ii). Again, in 1580 he had paid out 15 merks on a similar occasion, and was unable to recover the sum as the person guilty of the bill had later been executed for a different matter and his goods escheated to the Scottish crown. Cesford sought financial recompense, and was granted a warrant for payment of the sum from the Treasury; this was in fact paid, the Treasurers' Account for October of this year showing the payment of £70 Scots to Cesford for this purpose (iii). Earlier, on the East march, Hume had been paid in 1582 by the Treasurer £240 Scots for the relief of a similar bill (iv). When the Treasurer did pay out such sums he was expected to recover the money "in the maist rigour

(i) R.P.C.S., i, p.491.

(ii) ib., iii, p.612.

(iii) R.P.C.S., xiv, p.356; T.A., Ms., 1579-81.

(iv) R.P.C.S., i, p.183; T.A., xi, p.108.

maner" from the malefactors or their feudal superiors. It is obvious from this that any warden, in the adequate exercise of his duties, might find himself involved in financial difficulties which, for their solution, required an appeal to the central legal administration.

It has already been seen that to carry out his duties effectively the warden regularly required the support and co-operation of the inhabitants of his march, and occasionally the support of a neighbouring warden. Voluntary co-operation between the wardens was, as has already been observed, negligible; and when it was essential for the success of any operation or negotiation to have the assistance of the warden of a neighbouring march, it might be necessary for a warden to seek reinforcement of his request by an order of the Lords in Council. The situation was similar when inhabitants of the march were concerned; barons, landlords and clan chiefs "wer detbund ... to serve and await upoun the wardane at all dayis of trew" with their followers, and should they themselves, their tenants or their servants be found 'foul' of any bill, the person guilty was to be handed over to the warden to undergo the consequences of his crime. But such co-operation was not always forthcoming; in 1564 Cesford complained that the barons "abstract thair presence, makis na service bot in a maner lychtlefs, and esteemis the said Sir Waltir of na gritter power nor any uther commoun man nochtwithstanding that he is hir Mienes officiar and wardane and occupiis hir place and auctorite in that part" (1).

A complaint of this nature was bound to be upheld, and the Council did everything possible to reinforce the warden's power and authority over the inhabitants of his march. In 1564 it was proclaimed that, unless they had

(1) R.P.C.S., 1, pp.282-3.

previously obtained leave from the warden, absentees would be imprisoned; and later in the same year the penalty of imprisonment was altered in favour of a scale of fines "to be tane up for ilk falt ... [and] surelie kepit in a box, to be disponit to the utilltie of the common service" (i). These penalties to ensure attendance continued throughout the century. In 1579 Herries suggested that the money collected in this way on the West march should be used to fortify the town of Annan; apparently the fines had become one of the perquisites of the warden and were paid grudgingly. But in 1602 Johnstone was granted the proceeds of such fines as part of his warden fee (ii). To ensure attendance, a general proclamation of this type would only be effective if the enforcing clauses were rigorously carried out; it is probable that they were, for, although it is unlikely that a full attendance was regularly achieved, the warden was generally well-accompanied at days of truce in the latter part of the century, and no more complaints were made. The English wardens in fact regarded the Scottish wardens as too well supported by their followers and countrymen; they considered the large number present encouraged tumults and riots, and took measures to see that the more important negotiations were carried out well apart from the main forces on either side (iii). This English fear was possibly justified when one recollects that in 1583 all the inhabitants of the Middle march were ordered to attend Cessford at a day of truce "weill bodin in feir of weir"(iv).

It was a much more difficult matter for the Council to force landlords and clan chiefs to deliver their dependants to the warden to be handed over to the English officials. General proclamations were ineffective; only

(i) R.P.O.S., i, p.300. (ii) ib., iii, p.81; ib., vi, p.829.
(iii) C.B.P., ii, 784, 1090, 1093.
(iv) R.P.C.S., iii, p.570; for the significance of this phrase see Legge, p.21.

once, in 1580, was a general letter to this effect sent to landlords in the Middle march (i). Measures had to be taken against individuals for each instance complained of by the warden. When Mark Ker of Dolphinton complained in 1531 that certain persons within his march would not pay the bills fyled against them, the Council summoned their masters and ordered them to hand over the malefactors. And in 1602, on Cesford's complaint, the bailies of Jedburgh were ordered to hand over to him a thief resident in that town and under their jurisdiction (ii). This method of directly ordering the master of the man concerned to deliver him to the warden was the one most commonly used by the Council to bolster up the Warden's authority; and this could be reinforced by commanding the master to surrender himself if he failed to carry out the original charge (iii). If the master of the person declared to be guilty happened to be present at the Council meeting, he might have to take up a band to guarantee the entry of his servant to the warden (iv), or else find surety in some considerable sum of money as a similar guarantee; but such cases are less frequent (v). Since the object of entering the person fyled of a bill was to ensure the payment of the damages claimed in it, the master who was pressed for his entry might also find himself liable for payment of the bill; responsibility for entry was often linked with responsibility for payment, and the master was also forced to find surety for this (vi).

(i) R.P.C.S., iii, p.225.

(ii) A.D.C., p.352; R.P.C.S., vi, p.407.

(iii) R.P.C.S., iii, pp.262-3. Sometimes the malefactor might be ordered to surrender himself, but this was not likely to produce results (T.A., x, p.180).

(iv) R.P.C.S., i, p.168; ib., iv, p.808.

(v) ib., i, p.259.

(vi) ib., i, p.385.

It is impossible from the records available to judge how effective this reinforcement of the warden's powers actually was; and in fact some men were remarkably stubborn in their refusal to place their dependants in the warden's hands, especially if they were at variance with him for any reason. A notable case was that of Ker of Fernihurst and Rutherford of Hunthill, who continuously refused to enter certain of their men to Cesford (i). These men had been fyled of a bill at a day of truce apparently held on 5 September 1565, and, in their absence, Cesford had carried out the normal procedure of entering one of his own servants to the English warden; he then attempted to take the ordinary measures to relieve his servant, either by apprehending and entering the men fyled, or by having the bill paid by those legally responsible for the guilty men. His own power was apparently insufficient for him to achieve this, for on 21 September the Council ordered Fernihurst and Hunthill to enter their men to Cesford; this order was repeated on 27 October, with the additional command that because the Crown "doubtis of the reddie accomplisshement ... of the premisses ... in respect of the delay usit be the saidis" landowners, they should find surety to pay for the bill and remain in ward in Edinburgh until this was done (ii). They entered into ward, but on 7 November Hunthill was released to find and apprehend the culprit who was to be entered to the warden; and Fernihurst was also released sometime before 7 January 1566 (iii). However, they must either have entered the malefactors or paid the bill, on or about 5 February, for Cesford's servant was released from England on that date (iv). In this case five months of fairly intensive

(i) Ker and Rutherford seem to have failed to co-operate with Cesford on other occasions about this time. cf. H.Mss.C.R., xiv, 8, p.31.

(ii) R.P.C.S., i, pp.373, 385.

(iii) ib., i, pp.393, 416.

(iv) ib., i, pp.431-2. Cesford later sued Fernihurst and Hunthill for the expences of his servant in England between 5 September 1565 and 5 February 1566.

and continuous pressure was required to secure the desired result; and although it is possible that the time taken in this case was not exceptional, the point to notice is that the pressure was eventually successful.

But such pressure could not always be brought to bear on unco-operative borderers simply through the use of the legal powers of the central government; greater force frequently had to be employed, and on many occasions the warden was given a body of troops to assist him both in his frontier and in his internal duties.

This military support for the Scots wardens appears to have been a post-Reformation development, and probably reflected a desire on the part of successive Protestant governments, dependent to a certain extent on English goodwill, to make border administration more effective. On the other hand, extra garrisons of crown troops were frequently demanded by English wardens, and often supplied; their ostensible purpose was defence of the border from marauding Scots but they were also used to keep internal control (i). The success of this policy of internal action encouraged the Earl of Suffolk, the English Lieutenant, to suggest to the Scottish regent, Arran, in 1543, that troops should be allocated to the Scots wardens for a similar purpose, that they might attack the peace breakers together; Arran replied that his wardens would be "sa strenthit" that good order would be maintained on the Scottish side, but there is no indication that he meant by this phrase military forces, or that, if he did, they were ever provided (ii). The frontier situation was so precarious at that time that border troops were more likely to be used for warlike than for administrative purposes. Mary of Lorraine appears to have

(i) Coulomb, pp.98-100. See C.S.P.(For.) x, 978, 988 for examples of English demands for troops.

(ii) Hamilton, i, pp.451-2, 459.

regularly supplied military assistance for frontier control, but this was not normally under the wardens' supervision. In 1557 she asserted in a letter to her brother, the Cardinal, that she had been forced to maintain a force of horsemen on the frontier 'pour dompter ung grand nombre de larrons et rebelles', a force which appears to have been reinforced by a band of infantry under D'Oysel. Again, in 1558, Torreglis was granted the use of 50 horsemen, under the command of a lieutenant, and Hume, the following year, had a special garrison for Hume castle. But on these latter occasions the frontier situation was such that it is unlikely that these forces were to be used purely for administrative purposes (i). The earliest definite indication of the provision of special troops to assist a Scottish border official in his administrative duties only, dates from December 1560 when Lord Borthwick, Keeper of Liddesdale, was allocated a company of hagbutters to assist him when he held justice courts at Hawick (ii). The following year the warden of the West march had at his disposal a force of thirteen horsemen with spears, and twenty-five infantrymen with culverins, to help him keep his march in quietness (iii). Thereafter the provision of military forces for administrative purposes was a frequent, though by no means continuous, feature of the warden's resources, particularly on the Middle and West marches, and in Liddesdale; on the East march a special garrison was occasionally provided for Hume castle (iv).

The numbers of the men involved in this duty varied considerably, but they were never very large. On the West march both Herries and Johnstone

(i) T.A., x, pp.340, 376; H.Mss.C.R., xii, 8, p.99; Papal Negotiations, pp. 224-6.

(ii) G.Scot.P., i, p.499.

(iii) T.A., xi, p.59.

(iv) H.Mss.C.R., xii, 8, p.100.

successively had, for a period after 1579, the assistance of twentyfour horsemen and a captain, while in 1581 Cessford, for the Middle march and Liddesdale, had the service of two hundred men at his disposal (1). The latter number was much higher than normal, for very rarely was a warden supplied with more than one hundred men, and fifty was apparently regarded as the most economic number the Treasury could support. These forces were not, however, regarded as permanent additions to the wardens' power; they were raised only for as long as the government thought expedient, and could either be increased or diminished, according to the demands of a changing situation. The forty or fifty men allocated to Terreglis in 1565 were to vary in number according to his needs, while the hundred hagbutters placed at Fernihurst's disposal in November 1584 were to be reduced to fifty the following Candlemas, by which time he was expected to have brought the area under control; either Fernihurst was successful in this, or the Treasurer could not afford to support this force, as it was in fact reduced to twenty-five hagbutters and horsemen on 11 February 1585 (11).

Responsibility for raising and paying these forces rested with the central authority (111). Military units in the pay of the Scottish government were generally temporary in character, often being raised for a specific purpose and disbanded after use. A commission was granted to a military commander to levy a certain force, whose responsibility it then was to recruit his men, carry out the duties allocated to him, and to keep his

(1) R.P.C.S., iii, p.76; C.B.P., i, 99; T.A., Mss., 1578/9 - 79/80 (February - May, 1579); ib., 1579-81 (March - November 1580).

(11) R.P.C.S., i, pp.393-4; ib., iii, pp.76, 699; Newbattle Mss., ix, 75.

(111) R.P.C.S., iii, p.699.

troops under control. John Johnstone of Greenhill was given such a commission in 1585, presumably to assist the warden of the West march to keep order in the face of Maxwell disturbances (i). Companies of soldiers already raised for some other purpose could also be sent to the borders to carry out military duties there; in 1581 the companies of Captain James Bruce and Captain William Scrymgeour were detailed for duty on the Middle march, and were still in service there over a year later (ii). Generally the central government made the choice of commander, but it is possible that on a few occasions, some wardens were given the responsibility, or privilege, of choosing their own commanders (iii). The forces thus raised were squads of professional military men, acting under the orders of the warden, who was responsible for their actions; basically they were an additional source of power to enable him to carry out his duties more effectively. Not all military assistance was of this character, however. In 1599 William, Earl of Angus, Lieutenant of the West march, was given the services of "ane hundreth hieland men" to overcome certain outlaws; they were "to be intertenyed upoun the expenssis of the said outlawis rentis and leving" (iv). The possibility of the Lieutenant being able to control this force to be let loose upon the border countryside was remote, and, if this expedition ever took place, it is probable it led rather to increased disorder than the desired quietness.

The more regular military forces were not, however, expected to live on the country within which they operated; they were professional soldiers, and expected regular payment for their services. This payment was also the

(i) Fraser, Annandale, ii, p.11.

(ii) R.P.C.S., iii, pp.402, 522.

(iii) ib., iv, p.188.

(iv) ib., vi, p.32.

responsibility of the central authorities. Payment was made direct to the warden, who was responsible for disbursing it to the commander and his men; William Lord Ruthven, the Treasurer, was ordered in 1580 to pay Johnstone the wages for his garrison of horsemen on the West march, and Thomas Lyon, Master of Glamis, as Treasurer, was commanded in 1587 to pay Herries a monthly sum "for rasing and intertenying of 24 horsemen with a capitane and commandare" (i). Although occasionally these payments fell into arrears, the Treasurers do seem to have attempted to meet their obligation regularly. Herries and John Johnstone were paid money for the wages of their troops at regular monthly intervals from February to December 1579, and from March to November 1580; James Johnstone was paid for the entertainment of his garrison from August to November 1596; and other wardens received frequent payments (ii).

There is insufficient evidence to calculate the actual pay received by these forces. It does, however, seem to have been affected by the general inflationary trends of the time; in 1558 each horseman received £6 Scots per month, in 1561 £7 - £10 Scots, in early 1603, £1 sterling, this being equal to £12 Scots; this latter sum was doubled in April that year (iii).

(i) R.B.C.S., iii, p.316; *ib.*, iv, p.188.

(ii) T.A. Mss., 1578/9 - 79/80; *ib.*, 1579-81; *ib.*, 1595-7. Other payments to wardens include: Maxwell, 1561 (T.A., xi, p.69); Carmichael, September and October 1579 (T.A., Mss., 1578/9 - 79/80); Fernihurst, February 1586 (T.A., Mss., 1583-5).

(iii) T.A., x, p.340; *ib.*, xi, p.69; Fraser, *Annandale*, ii, p.13. It is difficult to make such calculations from the available information. No regular system of accounting was adopted; sometimes the number of men to which a stated sum was disbursed is not specified; sometimes the commander, who naturally received payment at a much higher, but unspecified, rate, is included with his men as a recipient of the stated sum.

At the same time, the troops recruited by different captains appear to have been given different wages. For example, in September 1579, Johnstone, warden of the West march, received £216. 13. 4. for one month's wages of twenty-four men, while Carmichael, Keeper of Liddesdale, received £1245 for fifty men for one and a half months; Carmichael's men would thus appear to have been paid at almost double the rate of the others (i). It is possible that Carmichael, being a military commander of considerable reputation, was able to recruit a better class of soldiers than Johnstone.

After 1587 the Treasurers, as in the case of warden's salaries, sought to cut down expenditure, and throughout the period of Maitland's influence, no payments were made to wardens for military forces (ii). As for wardens' salaries, various expedients were resorted to. In 1587 Herries was awarded the feudal casualties of the West march, which were to defray the expenses not only of his fee of office, but also of the troop of horsemen kept by him to enable him to carry out his duties; until this provision should operate, he was authorized to seize the property and goods, within his march, of persons put to the horn, who could reclaim them only after compounding with the Treasurer for them (iii). Special forms of taxation were also employed in order to pay these forces. In September 1586 when it was proposed to raise "ane ordinarie force of wageit men on horse and fute" to reduce the borders to obedience, a special taxation of £15,000 was voted for the purpose (iv). A more circuitous method of providing a special tax, perhaps an attempt to avoid a Parliament appears to have been employed in 1598 when an order of the

(i) T.A., Mss., 1576/9 - 79/80.

(ii) Payments were only resumed for a brief period in 1596 (ib., 1595-7).

(iii) R.F.C.S., iv; pp.222-3.

(iv) A.P.S., iii, p.425.

privy council that each 'quarter' of the kingdom should supply forces for service on the West march was rescinded; it was asserted that the lieutenant of that march would be able to carry out his duties more effectively "be ane ordinar garisoun undir wageis", payable by those previously called upon, "quhairin they will have a far greitair ease and releiff nor gif thay had gevin thair awne personall service", and according a special taxation of sixteen shillings from each pound land was levied (i). Personal service on the borders, as will be seen, was exceedingly unpopular; and it is possible, though unlikely, that the original order calling for such service was made with the intention of rescinding it in order to levy the taxation which, although no more popular than the service itself to the burgesses of the inland towns, was of considerably greater value to the central government (ii).

The military forces periodically sent to assist the wardens were therefore both levied and paid for by the central government; they were, however, in name at least, completely under the control of the warden, and were expected to act while on duty in the border area according to the directions of the warden only (iii). Their duties were therefore entirely linked up with those of the warden - they reinforced his power in the exercise of his ordinary international and internal administration, mainly in those aspects of it which implied the "dantoning and repressing" of rebels. This is shown quite clearly in the instructions given to Cosford and his military forces in 1581; they were to pursue with force not only men fyled at days of truce who had failed to present themselves to the warden for handing over to

(i) R.P.C.S., v, pp.434-5.

(ii) of. Chap. 5, section 3, pp.291-3.

(iii) R.P.C.S., iii, p.402.

England, but also the landlords, clan chiefs and others who had accepted responsibility for them under the general band (1).

The basic function of these troops was law enforcement, the law being both international and Scottish. They are apparently seen acting in this capacity early in 1586, when Captain Robert Maxwell was sent to apprehend certain Johnstones who had been declared fugitive by the Stewart court of Annandale (ii); in this instance, however, the government troops were being used by Maxwell in the course of his feud with Johnstone, and it is obvious from this that the possession of this extra power was a source of severe temptation to any warden involved in such personal disputes. In 1583 Johnstone was probably guilty of the same offence when his men under Captain Andrew Lambie attacked the lands of Arthur Graham of Blawatwood (iii); Graham took the obvious remedy of a complaint to the council, and received a measure of satisfaction. Government troops were also used as castle guards; the garrisoning of Hume castle between 1574 and 1576 has already been noted, and in 1599 Angus was ordered "to appoint ane number of soldiours in garrisoun to keip every one of the saidis houssis" belonging to Maxwell, Johnstone and Drumlanrig (iv). But, just as the warden was occasionally given special tasks to perform outwith his ordinary duties, so were the military forces given extraordinary services to perform; in 1582 some of the forces sent to Gosford the previous year were employed in collecting taxes from the minister of Bowden (v).

(1) R.P.C.S., iii, p.404.
(iii) ib., iii, pp.584-5.
(v) ib., iii, p.522.

(ii) ib., iv, pp.65-7.
(iv) ib., vi, pp.31-2.

The existence of a corps of government troops was obviously a great asset to any warden, and could assist considerably in maintaining law and order in the march to which they were allocated; Jesford, for example, asserted in 1590 that the disorder on the Middle march was much more extensive than on the West march simply because he did not have the advantage of such a garrison (1). In allocating such forces to the borders on a semi-permanent basis, serving for fixed pay under commissioned officers, the Scottish central government was perhaps initiating an administrative revolution, a new principle of government, admittedly military in character, but differing considerably from the more normal method of issuing private commissions of justiciary and letters of fire and sword in a haphazard manner. But to be truly revolutionary - and effective - the military commanders would have had to be under the direct command of the central government, and independent of any other local officials. They were, however, placed under the control of the wardens, who, although reliable officials in many ways, were too much involved in local and central politics, and who could scarcely refrain from using the troops to further their own ambitions and extend their own power. Accordingly the central government could afford to retain special military forces on the border only as long as they were used in a satisfactory manner; their use was therefore erratic.

To sum up, it was always possible for a warden to claim direct support from the central power in his administrative duties, help which could be in one of several forms. But governmental assistance of any kind - moral, financial or physical - was always liable to be abused by the already powerful wardens. It was therefore granted sparingly, and only when considered absolutely necessary.

(1) R.P.C.S., iv, p.530.

2. Supervision of the Wardens.

During the 16th century there developed a considerable difference of attitude between the Scottish and the English central governments towards the problem of supervision of their frontier officials. At the beginning of the century both powers possessed very similar ideas on the subject; in 1508, for example, Thomas Wolsey wrote to Henry VII that James IV agreed with his (Henry's) opinion that princes should not concern themselves with such small matters as raids and their redress, but should remit them wholly to the wardens, with strict command to do justice (i). But English administrative institutions, gradually becoming increasingly centralized throughout the early Tudor period, developed and coalesced under Thomas Cromwell into a massive national bureaucratic system; and, in the course of the administrative re-organization which took place after the Pilgrimage of Grace and the elimination of the frontier franchises, the wardens of the marches, and border administration in general, were brought within this system (ii). The English wardenship, formerly almost monopolized by the Percies, was now filled either by lesser men of the locality or by Southern officials of the government. These men were in continuous direct contact with a central administrative body, generally the Privy Council, sometimes the Council of the North, or with an official appointed directly by one of these bodies to supervise them (iii). The Scottish government, on the other hand, did not

(i) James IV, p.109.

(ii) of. Elton, *Passim*.

(iii) of. Reid, *Council*, pp. 163-5. In 1538 the wardens were theoretically subordinated to the Council of the North and reported to and received instructions from this body; members of the Council also were involved in Border Commissions (Hy.VIII, xiii, 1, 1269; ib., xiii, 2, 63; ib., xiv, 2, 203; ib., xii, 1, 594). This arrangement was short-lived; from 1541 the marches no longer came within the jurisdiction of the Council of the North, and wardens communicated directly with the Privy Council.

develop in this way so rapidly, and retained a laissez-faire attitude towards its wardens throughout most of the century. This can be illustrated by the fact that in 1564, after discussing in detail a matter of importance for the frontier region, the Scots council decided to remit to Maxwell of Perreglis, warden of the West march, "the ordouring and handilling of the mater to [his] discretioun and jugement ... sa to do thairintill as he findis maist convenient for the commoun weill of ^{this} realme" (i).

This is not to assert that there was neither contact nor correspondence between the Scottish government and the wardens. This did exist, but from the evidence available the communication would appear largely to have been in one direction; for there are few records of the warden writing to the government, although it may be surmised that a messenger would generally bring back an answer from the warden to whom he delivered a letter (ii). The Council was, however, careful to keep the wardens informed of its desires. Sometimes this took the form of general exhortations to them to do their duty. In 1532, the wardens of the East and Middle marches were directed to keep good order "and suffir na attemptat to be committit within Ingland ... undir all utir charge and perrell" (iii); and similar messages were frequently sent - for example to Cesford in 1587, and to other wardens in 1592 (iv). More often, however, the instructions were definite, relating directly to specific points both in frontier affairs and internal administrative matters. The wardens were charged, in 1538, not to reset English fugitives fleeing from the justice meted out to malefactors across the frontier by the English Lieutenant, the Duke of Norfolk; in the same year Cesford was ordered to apprehend a certain offender "Jok Scot with the thowmys" (v). In 1558 Hume was to convey

(i) R.P.O.S., i, p.301.

(iii) A.D.O., p.385.

(iv) R.P.O.S., iv, pp.209, 768.

(ii) T.A., v, p.153 "and broocht thair answer".

(v) T.A., vi, pp.310, 391.

the Flemish ambassador to England, and to make balofires and keep a watch on the frontier (i). Cesford was charged by Queen Mary, in 1567, to collect a force to subdue the inhabitants of Liddesdale; while in 1580 a letter to Hume of Wedderburn gave detailed instructions on how he was to deal with two English bills (ii). In 1584, James VI commanded Cesford "to put immediat ordour" to his wardenry, and to hold days of truce at once; two years later the same warden was instructed to restore a certain brown horse taken from an Englishman (iii). Herries, in 1586, was charged to enter specified men of the surnames of Elliot and Armstrong before the privy council (iv). Sometimes the message would give the warden information; for example, Fernihurst, in 1585, was told that negotiations had been undertaken with England to relieve the pressure, which was being put upon him, to give redress for bills incurred before his entry into office (v). The correspondence between the government and the wardens thus covered every aspect of the wardens' duties in careful detail.

The total volume of such correspondence can scarcely now be ascertained; but by a minute examination of those sections of the Treasurer's Accounts devoted to the movements of royal messengers, some indication may be obtained. The entries for payment of expenses to these messengers show not only the dates of their journeys but also the names of those to whom letters and instructions were sent. Sometimes, presumably when the missive was a letter patent, a précis of the contents was given, but the majority of letters sent to the wardens were "olos writtingis", and, since few of these letters appear to have survived, their contents remain unknown. The

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- (i) T.A., x, pp.333, 370.
(ii) H.Mss.C.R., xiv, 3, p.34; H.Mss.O.R., Milne Hume, p.50.
(iii) C.B.P., i, 242; R.P.C.S., iv, p.81.
(iv) *ib.*, iv, p.240.
(v) Newbattle Mss., ix, 69.

following table gives examples of the numbers of such letters sent during some of the more intensive periods of correspondence; it is probable that the record was incomplete.

<u>Period</u>		<u>Warden</u>	<u>Number</u>
July 1515	- August 1516	Maxwell	12
August 1515	- August 1516	Cesford	12
March 1533	- October 1533	Maxwell	9
February 1542	- November 1542	Ayten	4
January 1543	- September 1543	Hume	10
January 1547	- August 1547	Hume	6
February 1558	- March 1559	Hume	11
April 1558	- March 1559	Cesford	10
May 1562	- December 1562	Cesford	13
April 1565	- May 1566	Maxwell	14
May 1565	- May 1566	Hume	15

This would appear to show regular, almost continuous, communication. But all these periods of more intensive correspondence can be explained by special circumstances, generally by the existence of internal or international crises. The general level of communication was much lower; sometimes years passed with no messages or instructions being recorded - although it is possible that messengers were sent without their expenses being recorded in the accounts. The conclusion to be drawn is that the link by correspondence between the council and the wardens was a slender one; only at moments of crisis did the government attempt to direct the activities

of the wardens in this way (1).

The general attitude was therefore apparently one of leaving the warden to carry out his duties by himself in all normal circumstances; yet, it has already been clearly shown that some form of control was necessary over these officials. Supervision did exist throughout part of the century, in both direct and indirect forms.

It is essential to emphasise that control could be exercised only by the council itself, not by any permanent intermediate official; for the warden by the terms of his appointment was responsible for his actions only to the King and Council who appointed him, and no intermediate official could be allowed to break this direct link, except for a special and temporary reason. Only the King himself, or his Council, was competent to supervise the warden. Accordingly in 1525 the Lords of Council rejected a suggestion made by Thomas Magnus, Archdeacon of York, the English representative in negotiations for peace, that official "conservatouris be maid aboune the wardanis" to ensure that the provisions of the treaty were properly carried out; instead they declared that they "sall thameselfis continualie wake and ceus the lieutenantis and wardanis to do justice according to the lawis of the bordouris" (11).

The link between the Scottish wardens and the King and Council

(1) The fact of this correspondence and its periods of intensity must not, however, be minimised. In 1550 Maxwell of Terreglis received a warden fee for three years' service, but no mention was made of the period during which he served. But since Terreglis received, in the period between October 1546 and June 1548, at least eight letters from the Government, more than any other inhabitant of the West march, some indication may be obtained of the period of his tenure of the office.

(11) A.D.C., p.231.

unlike that between the English officials and their Government, was essentially a personal one. This was in the first place due to geographical factors. The frontier and the marches were fairly close to the centre of Scottish administration at Edinburgh, for an active man no more than a day's journey on horseback. The English frontier administrator, on the other hand, was at a considerable distance from his centre of government, even when it was temporarily moved north from London to York; despatches took forty-eight hours to reach Newcastle from London (1). The advantage for Scots administration is obvious; the wardens could be brought into direct contact with the king and council, and with each other, at the administrative heart of the kingdom. Secondly, many wardens were themselves councillors. The Lords Hume and the Lords Maxwell were Lords of the Council throughout the 16th century; and in the reign of James VI, John Carmichael, Walter Ker of Cesford and Robert Ker of Cesford - all active wardens - became members of the Council, attending meetings with a fair degree of regularity, in keeping with their other duties. The English wardens, on the other hand, were, during the 16th century, officials of much lesser standing, relatively.

Accordingly, for special discussions on border affairs, the Council could send for all the wardens, or for anyone of them who, not being a councillor, happened to be absent, to give advice "for the ordouring of the borderis", and to receive instructions (ii). The council records show many examples of this. In December 1531, the Lords of Council, in presence of the King, ordered letters to be sent to all wardens and lieutenants of the

(1) Kermaek, p.29.

(ii) A.D.C., pp.369, 433; H.Hss.C.R., Milne Home, p.50; C.Scot.P., i, p.645.

marshes charging them to appear before them to discuss Border affairs (i). At the end of the century, in July 1600, the Council arranged, for the same purpose, "a mair frequent meeting, alsweil of his Majesties counsaile as of the thrie wairdanis, and specialie noblemen and baronis of the haili thrie Maircheis" (ii). The records also show some parts of the deliberations which the wardens attended. In January 1531, for example, all the wardens were present at a council meeting which discussed the desire of Henry VIII for days of truce on the marches; they agreed with the council that this was desirable, stating their willingness to see this done provided that the English king ensured that his wardens would do the same (iii). Later in the same year George Lord Hume, warden of the East march, was personally given orders to exchange pledges with the English wardens, in order that certain conditions agreed upon by commissioners of both kingdoms might be fulfilled; it is probable that the other wardens were also present to receive the same instructions (iv).

In this way the wardens could take part in the debates on Border matters, and could assist in formulating the policy they themselves were to put into effect. They understood, and had assented to, what they were doing, and thus there was some measure of assurance that their actions would be in conformity with the ideas of those controlling the central government. Yet the possibility remained that one of them, for personal reasons, would ignore the agreed policy, and strike out on an independent policy of his own. Some machinery did exist to deal with this situation.

(i) A.D.C., p.367.
(iii) A.D.C., p.346.

(ii) R.P.C.S., vi, p.136.
(iv) ib., p.363.

It will be recollected that the wardens were appointed by the king in council, and were dismissable by the same body. Accordingly, one of the most important means at the Service of the Council in controlling the wardens was the threat of dismissal. This is shown by the fact that in 1593, Robert Melville of Mardocairny, the Scottish ambassador to England, was instructed to make the following statement about the Scottish wardens: "they ar ... of greatest habilitie and power in thay boundis, and as we trest favourers of the present tranquillitye ... Yf there be defaultis in the qualities of our wardens we will not spair to put better in their places, as be gud advise shalbe found requisit" (i). Five years earlier, Carmichael's instructions had been couched in similar terms - 'we will not be slawe to place better disposed persons in their rowmes' (ii). The threat was a powerful one; removal from the wardenship was, to a man who believed he had an almost hereditary claim to the office, a considerable blow to his prestige, and thus to his personal power and authority in the border area, and no borderer, no matter how powerful, could risk this. It was a penalty which could be enforced by a strong central government; in 1538 the wardens of both the East and Middle marches were dismissed for unspecified crimes connected with their border administration, probably their failure to observe a general band to the King(iii). Yet this was a step the central authorities always hesitated to take, for it invariably created considerable disorder, the dismissed warden with all his friends and kinsfolk rejecting the authority of his successor. When Walter Ker of Gosford was dismissed in 1551 and was replaced by Walter Scott of Branxholm, a feud was rekindled between their families which resulted in the murder of the new warden in the course of

(i) Warrender, ii, pp.212-13.

(ii) C.Scot.P., ix, p.549.

(iii) see Appendix 3.

the following year.

A more direct method of control was used occasionally in the 16th century, by which the Crown or Council acquired a direct hold over the warden. On appointment, or on renewal of appointment, a warden would leave a close kinsman in the hands of the Crown as a pledge for the efficient performance of his duties; or he would find surety for a large sum of money. In 1524, Andrew Ker of Cesford, who was suspected of maintaining thieves in his wardenry, left his brother in ward in Edinburgh as a pledge for his good behaviour in his office. In 1530, after the royal raid on the borders, Robert Lord Maxwell, before being restored to office on the West march, not only had to enter his son as a pledge but also had to find surety of £8,000; at the same time, and in similar circumstances, the joint wardens of the Middle march, Dolphinton, Fernihurst and Buccleuch, also entered kinsmen as pledges, and found surety for similar sums (1). But exceptional circumstances affected these cases; and more than this was necessary if any supervision of these officials was to prove effective.

The most effective form of supervision and control was by direct contact with the wardens as they carried out their duties. This contact was achieved by sending to the march representatives of the council, whose functions were to accompany the warden on some of his business, to advise him on exceptional points arising out of this business, and to supervise his conduct of it. Records of this form of supervision come mainly from the East and Middle marches.

Members of the council were ordered to attend the justice courts held by the warden-justiciar "to se justice dewlie ministrat" and to assist

(1) A.D.C., pp.210, 335-9.

him; the Lord Justice Clerk, Lewis Bellenden of Auchnoul, with James Haliburton, a member of the Privy Council well versed in border affairs, and other "speciale gentilmen of credite" attended justice courts held by Gosford on various occasions towards the end of the 16th century (1). In much the same way central officials were sent to the borders to oversee days of truce. Richard Bothwell and Adam Otterburn were sent to Redenburn in 1521; in 1532, the Comptroller, James Colville of East Wemyss, with Thomas Scott of Petgorno were sent to the East and Middle marches; in 1543, Thomas Bellenden of Auchnoul, the Justice Clerk, was also ordered to attend days of truce (11). Later in the century Robert Carnegie of Kinmaird, Andrew Johnstone of Elphinstone, David Hamilton of Preston, James Makgill of Rankeillour (the Clerk Register), Sir William Stewart and Robert Melville of Murdoesairney all acted in this service (111).

These men were nearly all councillors. As such they represented the council as a whole, and, in addition, they appear to have been given special commissions of supervision whereby they were to be regarded as special representatives of the Crown, "as [though] the kingis grace was personally present". Their function was basically judicial - "to se justice dewlie ministrat", "to se that our wardane do his dewite" - and on one occasion at least they were stated to have been sent specifically "because we have sumtyme funding the wardanis negligent" (iv). It is probable that some of this judicial supervision, especially that in justice courts, applied to those

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- (1) R.P.C.S., 111, pp.339-40, 363-4, 448-9; ib., iv, pp.45, 259.
 (11) Hy. VIII, 111, 1897; ib., v, 1558; ib., xviii, 1, 749; A.D.C., p.384.
 (111) R.P.C.S., xiv, pp. 131, 140; C.B.P., 1, 493; C.Scot.P., 1, p.499; ib., 11, pp.59, 77.
 (iv) A.D.C., p.384; R.P.C.S., xiv, pp.131, 141.

cases where the warden was at feud with one of the parties involved and therefore could not be regarded as an impartial judge. But on the whole the control seems to have been intended to be of a much wider character; the wardens of the East and Middle marches were to obey Colville and Scott in all things, and follow all their directions. These two were in fact given a wide range of powers and duties; not only were they to see that days of truce were properly appointed and held, and that redress was promptly made, but they were also given power to receive prisoners, and to act on their own initiative, a degree of supervision implying the previous existence of considerable negligence (1).

Those involved in this supervision of the wardens were all men of considerable importance to the central administration of Scotland. Many of them had been trained to the Law, and had achieved considerable success in their profession at a time when the Scottish legal system was undergoing a renaissance. Colville of East Wemyss, Richard Bothwell and Adam Otterburn were among the first men chosen by James V as Senators of his College of Justice, and Scott of Petgorno, Carnegie of Kinnaird and Melville of Murdocairney also achieved this distinction, along with the Justice Clerks and Clerk Register mentioned, as their offices imply (11). Their legal and administrative training made them efficient representatives of the Crown and Council in the Borders; and to this task some of them brought a further qualification - the development of a specialised interest in border affairs and in the international relationship with England.

(1) A.D.C., pp. 384, 386.

(11) see the biographies in Brunton and Haig.

They were active on the borders not once but several times, and they carried out other duties closely allied to this task. Otterburn, Colville, Carnegie and Melville were all ambassadors to England on several occasions, while Otterburn, Colville, Makgill, Carnegie and Thomas Bellenden all served as border commissioners, treating with England in arranging truces after border warfare, and on other occasions; Johnstone of Elphinstone was himself a warden for a short time. Melville and Lewis Bellenden were, with others, associated in 1586 with Archibald Earl of Angus in his Lieutenantancy of the Borders, and they were also members of the special court set up in 1590 to deal with border problems (1). Accordingly these men brought to their task of supervising the wardens not only the ability to look at border problems with the mind of the trained lawyer and administrator and from the viewpoint of the central administration's international policy, but also a detailed and expert knowledge of the pattern of forces and influences far from the frontier which could affect the conduct of border affairs.

This form of supervision was obviously the most efficient that could be devised by the Scottish administration; the finest officials of the central government brought their not inconsiderable talents to amplify the local knowledge and power of the warden, restraining him when necessary, and directing his energies in the proper channels. Sometimes results were achieved; in 1521, after a period of diplomatic discord, Bothwell and Otterburn succeeded in having four bills of each country fyled, at a day of truce at Redenburn. On the other hand, in 1532, Colville and Scott, in spite of their extensive powers, failed even to arrange a meeting with the English

(1) Fraser, Douglas, 111, p.288; R.P.C.S., iv, p.790.

warden (i). But even when it was effective, such direct supervision could only be intermittent. The supervisors' abilities were required for other important matters at the centre of government; and their 'interference' in border affairs was liable to create trouble with the proud and sensitive wardens - in 1587 "the Lard of Gessford dyd verie muche mislike" the arrival of Stewart and Melville in the frontier region to supervise him (ii). Although direct supervision was always regarded as of importance, no regular supervision of this character was imposed on the wardens during the 16th century; and when, in 1579, Lord Herries suggested that the Council should send representatives annually to Dumfries to hold a justice court to examine the activities of the warden of the West march, and see that he had diligently exercised his office, the suggestion was ignored (iii).

Parallel to these forms of direct supervision there existed a form of indirect supervision. It was always possible for any inhabitant of the wardenries, should he care to take the risk of offending the wardens and their kinsfolk, to complain to the Council of any aspect of the wardens' conduct in office; and, of course, the English government could always complain, through diplomatic channels, of any alleged misconduct in international affairs. In dealing with these complaints, the Council was able to exercise some power of supervision over the wardens.

English complaints were treated in the light of the political and diplomatic situation of the time. Sometimes the action complained of was part of a deliberate policy of the Scots government, and the complaint was virtually

(i) Hy. VIII, iii, 1, 1897; ib., v, 1558.

(ii) C.B.P., i, 493.

(iii) R.P.C.S., iii, p.79.

ignored. On the other hand the complaint could be made in such circumstances that it could not be ignored. This happened in 1596 with the Kinmont Willie episode. This exploit of the Keeper of Liddesdale aroused considerable enthusiasm among Scots people, and the government, including the King himself, considered that Buccleuch had justification in border law for his action. Yet they could not support him openly and fully, for to do so might wreck James' ambition of succeeding to the English throne; and although the considerable English pressure to hand over Buccleuch to Elizabeth was resisted, Buccleuch was committed to ward in St Andrews castle for a short period (i).

When English complaints were unaffected by any considerations of policy, steps were taken to investigate the matter. The offending warden was summoned to a meeting of the Council and given the opportunity of justifying his actions. For example, in 1554, when complaints were made that Elphinstone's procedure at days of truce had been ineffective, he was called before the Queen Regent and the Council; there he defended his actions and made a counter-complaint against the English officials. In view of this situation, the Scots suggested that representatives both of the English and the Scots Council should be present at the next day of truce (ii). In the same way, when a complaint was made against Maxwell that he delivered pledges in lieu of the real malefactors, he was called before the council and instructed to conform to the English desires in this matter (iii). Thus, when it suited the Council, English complaints could be the basis of an act of supervision.

(i) Cf. Stafford, pp.169-71.

(ii) R.P.C.S., xiv, pp. 150-1.

(iii) ib., xiv, pp.135-6.

Complaints concerning the warden made by barons or other inhabitants of the marches were more important in that they could not so easily be ignored; they at least had to be heard and considered, and perhaps some appearance of action made, to preserve the reputation of the Crown for justice, lest and/the complainers should form a new politically disaffected group. By the end of the century complaints were being made so frequently that in 1602 a special day was regularly set aside by the Council for complainers to appear personally to make their complaints in the presence of the warden (1). Their complaints can be divided into three categories: complaints against the wardens' execution of their office; complaints of a legal character; and, most fundamental, complaints against the very source of their authority, the powers granted them by their commission of office.

The complaints against the warden's execution of office varied in character. Some referred to specific actions which, it was claimed, were illegal. For example, Alexander Carlile complained in 1578 that he had been illegally detained in prison by Maxwell; in 1583, Arthur Graham asserted that a company of soldiers, acting under Johnstone's orders, had illegally invaded his lands and removed cattle and sheep (11). Other complaints were concerned with the failure of the warden to take the appropriate action when the course of his duty was clear. John Graham complained in 1576 that he had successfully billed for restitution of certain goods from England but had received no satisfaction although Maxwell was in a position to give him it; and in 1580 Lady Wemphray complained that Johnstone had refused to execute an order given him by Ruthven, the Lieutenant of the Marches, his temporary

(1) R.P.C.S., vi, p.358.

(11) ib., 111, pp.24, 584-5.

superior (i). All these complaints against the warden, whether of actions done or of actions not done, were favourably received by the Council, who ordered the warden either to make amends for his faults or to act where he had previously neglected to do so. Maxwell was ordered to release Carlile, who had found surety, and to obtain satisfaction for John Graham's bill; Johnstone was ordered to restore Arthur Graham's goods, and to execute the precept in favour of Lady Wamphray.

The legal problems brought before the Council generally, though not entirely, concerned the financial responsibility for bills fyled at a day of truce with the English officers. It has been seen that part of the business transacted by a warden court was to assess and apportion the financial responsibility for such bills; accordingly when the Council dealt with similar cases it was acting as court of appeal on complaints brought by parties dissatisfied with a decision reached on behalf of the warden by such a court. According to border law as stated by two experienced borderers, John Stewart of Traquair and Alexander Hume of Manderston, a person once acquitted by a warden court of a share in any bill could not be fyled again for the same bill, although he was really guilty of the crime; the warden had performed his duty and could himself take no further action. The Council, however, could retry the matter to ensure that the guilty person answered for the bill and made the necessary redress (ii). As stated thus by these borderers, the idea of appeal to the council against the decision of the warden court would appear to have had some grounding in border custom; but it is more likely that this was an application by the

(i) R.P.C.S., II, pp.538-40; ib., III, pp.338-9.

(ii) ib., III, p.621.

central government, to its relationships with the wardens and their courts, of the principle of appeals which had been developed from the act of 1471, whereby complaints could be made to the King and Council against any verdict held to be influenced by 'partial malice or ignorance' (i).

In dealing with these appeals the overriding consideration to the council was that the financial restitution promised to the English wardens should be paid as soon as possible; someone had to pay it - and if the person who did pay was not guilty of the original theft, he could use the normal processes of law to recover the money from the guilty party. Accordingly, as in the warden court, before his appeal was heard, an appellant might be ordered to pay the outstanding bill. John Hume of Crumstane was ordered to pay before he 'produced his proof' against those he alleged to be the real culprits (ii). When the appeal did finally come before the Council, the case was retried by an assise of borderers according to the border law and custom for the point at issue, which had been notified previously to the Council by borderers chosen for their experience in such matters. Traequair and Manderston advised the Council on the law and procedure in Crumstane's case, and an assise of borderers judged it (iii).

In addition to these appeals from a warden court the Council could also hear in its presence appeals against wardens who at days of truce had fyled persons of bills for which they were not responsible. This forms the other main group of legal problems brought before the council. The "ordour observit in sic caissis" of illegal fyling was similar to that for

(i) A.P.S., II, p.100, c.9.

(ii) R.P.C.S., III, p.623.

(iii) ib., III, pp.621-3.

appeals from the warden court. The bill was first paid by the appellant; a group of Davidsons paid £220 Scots to England before their appeal was heard, and James Turnet could "haif na place to persaw for his relief" until he had paid the £60 bill of which he had been illegally fyled (1). Then the case was retried before the council by an assise of borderers nominated by the warden and accepted as suitable by the appellant (11). The possible advantages of such a trial are obvious; away from the border country where legal decisions were liable to be influenced either by the maintenance of a malefactor by a powerful baron or laird, or by the armed force of a thief's clan present at his trial, the truth of the matter was more likely to be found - although it must always be remembered that the members of a convicting assise might find themselves on their return home at feud with the family of the person they had convicted. By this method mistakes made by the warden, whether deliberate or not, could be rectified by the Council, although there seems to be no record of a warden being rebuked for his errors.

The case of Hume of Crumstances is of some interest as showing the reversal of the decision of a warden court where the guilty party was maintained by the warden himself. Hume had at a day of truce in 1588 avowed that certain Turnbills, kinsmen of Gosford, were foul of an English bill; Gosford, who appeared "maist partiallie to evert justice", procured their acquittal at a warden court, thus making Hume, because of his 'false' avowal, liable for payment of the bill. On Hume appealing to the Council, the case was retried, although an assise of borderers was obtained only with difficulty;

(1) R.P.C.S., 11, pp.624, 639.

(11) ib., pp.593, 623.

the Turnbulls were found guilty and their goods escheated in favour of Hume and the warden (i). The following case is also of interest. Certain Davidsons had been illegally fyled before Cosford in 1577, and appealed to the Council; the assise nominated by the warden declared the Davidsons guiltless, and the warden was ordered to repay the amount of the bill already paid by the Davidsons and the expenses of their appeal. This he did, but then proceeded to reclaim the sum from Dandy Tait, the person who had originally avowed the Davidsons' guilt; this process involved the reopening of the entire case, as Tait declared his avowal to be the truth. Tait failed to prove his case, and was ordered to pay the sum claimed by Cosford; the matter was closed after four years of constant litigation (ii). In neither instance did the warden, though legally at fault, suffer any penalty or disadvantage.

The third form of complaint brought before the Council by the inhabitants of a wardenry concerned the powers granted to a warden by his commission of office. Such complaints could be personal; Maxwell complained in 1586 that Johnstone used his official powers "not for any seale or expedition of justice ... but onelie by ... malicious devisies to bring me in some slander" (iii). But the more important complaints had the support of a large section of the population. The people of Kyle and Carrick, who were not within the West wardenry, resented Angus, the warden, seeking service from them on the borders (iv); and within the same march, John

(i) R.P.C.S., iii, pp.621-3, 626, 628-9.

(ii) ib., ii, pp.639-40; 652; 686; ib., iii, pp.251-2, 421.

(iii) Hamilton, ii, pp.637-8. There is no trace of the action taken as a result of this appeal.

(iv) R.P.C.S., vi, pp.79-80.

Gordon of Lochnivar on two occasions brought before the Council complaints of the barons and freeholders of Hithsdale that certain powers of the warden were excessive. Carmichael's commission of 1591 apparently contained additional powers of justiciary, in particular the power to hold justice ayres within the wardenry, and the power to grant respites and remissions "upoun compositioun for capital crymes"; this was a "novatioun" which drew the inhabitants of his march "continualle fra thair awne lefull effearis ... to attend upoun his courtis", and one which they wished to be annulled. Two years later they desired certain parts of Maxwell's commission also to be annulled for much the same reasons; this commission was described as "an ample regall power" which, the complainers alleged, "was nather tollerable nor conformes to reason". According to an English official, the crux of the matter in this instance was the king's grant to Maxwell of feudal casualties as a source of income; but it is probable, at least in Carmichael's case, that the delegation of the royal power to grant respites and remissions for capital offences caused considerable local ill-feeling, particularly if it too was used openly as a mere source of income (1). There were, however, probably additional political reasons why these two officials should have been singled out for this attack (11). Complaints of this nature were received sympathetically by the Council, although care was taken to ensure that the complaint was not motivated by any purely personal animosity or feud; the points were carefully examined either by the Council itself, or by a committee of the Council specially appointed for the purpose, and a judgment given, frequently in favour of the complainers, although the royal prerogative to grant commissions in any necessary form was reserved.

(1) R.P.O.S., iv, p.580; ib., v, pp. 39-40; James Sext p.263; O.B.P., i, 788.

(11) See Chap. 6, section 5, p.429.

From all this, it is apparent that the Council could interfere, under certain conditions, in a warden's exercise of his office, and thus acquire a measure of control over some at least of his activities. When the warden acted illegally, or used his powers in too arbitrary a manner, machinery existed whereby redress could be obtained. Forms of direct and indirect supervision of the wardens thus existed side by side throughout the 16th century. But the existence of these forms of supervision does not necessarily indicate that it was used regularly, or even at frequent intervals; it is possible to overemphasise the restrictive part played by the council in its relations with the wardens. On the whole, the government did not feel the necessity for direct continuous supervision of the wardens, particularly by another permanent official.

On the other hand, circumstances did sometimes arise when further measures than those described appeared necessary. These further measures were of two types: either a temporary official acting under the orders of the Council - a Lieutenant of the Marches - could be placed in charge of the border area; or certain of the functions of the warden could be withdrawn temporarily from him into the hands of the central government and exercised by Border Commissioners. Both these measures must now be examined in detail.

5. The Wardens and the Lieutenants of the Marches.

The reader will recollect that the administrative Lieutenants of the Marches were powerful, but temporary, officials of the central government, the heads of the greatest families in Scotland, and generally themselves important members of the council. They were sent to the border region to carry out specific administrative duties concerned with the maintenance of

law and order, a task which generally overlapped with the duties of the wardens in all their aspects, internal and international. It is obvious that their relationship with the wardens was a matter of some importance in border administration, especially as many lieutenants were considered to be taking the place of the king himself.

Before examining this relationship more closely, it is necessary first to examine the position of the lieutenant and the powers granted to him. These powers were basically judicial; he was given "plenary power and special mandate" to hold courts where he could "prosecute all persons suspect or accused of theft, reset of theft, arson, homicide, murder, violent oppression, export of prohibited goods especially such as are customable, or whatsoever other odious crimes perpetrated" (i). In addition to this internal administration of justice, the lieutenant was expected to hold days of truce with the wardens and lieutenants opposite (ii). In all this there appears no distinction between the lieutenant and the warden-justiciar - both had the same duties and similar powers. But although the lieutenant, like the warden, was to "caus justice be ministrat upoune [malefactors] ... according to thair deservings" (iii), he had the additional power, as immediate representative of the King, of being able to grant remissions.

(i) Warrender, i, pp.112-3.

(ii) A.P.S., iv, p.171.

(iii) ib., iv, p.171. The administration of justice here implies, of course, capital punishment. This explains the apparently curious proviso which follows this phrase: "exceptand alwayis the redres of attemptatis aganis england". Malefactors in this category, who had offended against the border laws, could not immediately be executed on the authority of an internal official; the case was a matter for frontier officials on both sides, who had to arrange for redress to be made before the criminal suffered the penalty for his crime.

On occasions during the 16th century it was believed that through "clomencie and pardoun for bigane offence" rather than "the lyffis of mensocht", it was possible "to obtane trew men redres of their harmis and skaythis reassavit" and to persuade "the offendouris to obedience and bettir forme of living" (i). The remission allowed the criminal to escape the legal consequences of his crime; a monetary value was put on the stolen goods and a landowner stood surety for the payment of this sum to the offended party (ii). It does not seem likely that in that era the granting of pardon to thieves would result in the restoration of many stolen goods nor in their permanent reformation, and it is probable that the Crown was more interested in the monetary composition received in return for the favour, than in any enlightened social principle. None the less, the power to grant remissions was given to most of the Lieutenants of the Borders, sometimes in their commissions as it was to Ruthven in 1572 (iii), sometimes by special authorisation as to Arran in 1518 (iv). In 1528 the king's secretary and the keeper of the Signets were instructed to expedite Bothwell's remissions by accepting his signature as an immediate authority for obtaining the royal signature, thus speeding the remission through the normal channels of the signet, privy and great seals (v). During the minority of James VI, Ruthven's own remissions, without recourse to the central administrative machinery, were to be 'as effectual as if granted under our signet, secret

(i) R.P.C.S., ii, p.572.

(ii) This process can be seen in action in Pitcairn, i, p.29.

(iii) Warrender, i, pp.112-14.

(iv) A.D.C., p.119. This authorisation passed through the signet on 21 March (R.S.S., i, 2978), and subsequently the great seal.

(v) A.D.C., p.306.

and great seals'(1). And it was power of this nature which led Argyll to claim in 1528 that all letters and proclamations issued by him as Lieutenant should have effect as those of the king (11).

It has already been noted in the previous section how the delegation of this power in 1591 to the warden Carmichael roused the antagonism of the inhabitants of the West march as an unprecedented grant of power; that it could be granted without comment to Lieutenants of the marches indicates how much more powerful they were than the wardens. The grant of this power also shows the position of the lieutenant in relationship to the king. Clemency was part of the royal prerogative, and it was extremely doubtful in constitutional theory whether the king could lawfully delegate any aspect of his prerogative (111). The fact that during the 16th century the Lieutenants of the marches were armed with this power of clemency meant that they were, temporarily at least, as powerful as the king himself, in this respect. Many of the lieutenants were, as has already been pointed out, acting as Regents during royal minorities, and by accepting the doctrine of distinction between the king's person and his official capacity, between King and Crown, it could probably be argued by 16th century lawyers that the Regent had a right to this power. Other Lieutenants were in the similar position of acting on behalf of the king in a situation where by reason of age or absence he could not act himself. Ruthven was appointed lieutenant with powers of granting remissions during the minority of James VI 'considering that we in our proper person cannot go timely to the said borders for the punishment of the said malefactors' (iv). The lieutenant literally

(1) Warrender, 1, p.113

(11) A.D.C., p.297.

(111) of. Chrimes, Constitutional Ideas, pp. 57-8.

(iv) Warrender, 1, p.112. Appendix 5 shows that the majority of lieutenants were appointed during minorities.

took the place of the King.

Thus, although the lieutenant and the warden carried out the same duties, the power and position of the lieutenant was considerably greater. He was carrying out, in relation to the borders, duties which would normally be undertaken by the king (i) and this not only created for him a position of superiority over the wardens but also implied a degree of supervision over them. This superiority is confirmed by the fact that they were "auctorised with the hail power of the wardenries" (ii). Lieutenants were, in fact, active most regularly in areas where the wardenship was weak, where the ordinary system was breaking up and the administration required some direct central supervision. They acted, for example, on the East march in the early part of the century, where the execution of Alexander 3rd Lord Hume had left a power vacuum, which encouraged revolt and lawlessness; and, on the West march towards the end of the century, where the Maxwell family, having lost its monopoly of local power through repeated minorities, was being challenged by the growing influence of the Johnstones, thus creating a situation of extreme instability.

When the lieutenant arrived in the area of his jurisdiction to deal with situations such as these, one of two things happened; either the wardens were removed from office, the lieutenant taking over all their normal duties, or the wardens were subordinated as deputies to the lieutenant, who supervised the exercise of their duties. An example of the former method is shown in 1524 when Andrew Ker of Gosford was removed from the wardenship to

(i) This will be confirmed in Chap. 5 when the judicial raids undertaken by both kings and lieutenants will be described.

(ii) G.Scot.P., viii, p.502.

make way for Angus as Lieutenant (1); De Labastie, Arran and Lennox, all on the East march in the early years of the century, and Angus, on the West march in 1588, also combined the offices of Lieutenant and Warden in this way. But the latter method appears to have been more usual, both officials working together on the frontier; for example, in 1532 when Moray was appointed Lieutenant of the East and Middle marches, Hume for the East march, and the three associate wardens of the Middle march, became his deputies and acted on his behalf (ii). The Lieutenant was responsible for the actions of his subordinate, and had supervisory powers over them; this is indicated by Ruthven's commission, in which he was given power to direct and command the wardens of all the marches, and also authority to discharge the keepers of Liddesdale and appoint others in their place (iii). In circumstances such as these, the English officials emphasised the lieutenant's responsibility by continuously seeking satisfaction from him for the shortcomings of his inferiors; in 1577 Angus was frequently requested to see that Cesford and others did their duty in dealing with border affairs (iv).

As the lieutenant could scarcely be expected to act in person continuously throughout the entire area of his jurisdiction, the measure of success he achieved depended to a great extent on the amount of co-operation he received from these local subordinates, and the efficiency of his supervision over them. In general it was expected that the existing local officials would associate with the lieutenant, working under his orders and reporting

(1) A.D.C., pp. 214-5.

(ii) ib., pp. 387-8.

(iii) Warrender, i, p. 114. On this occasion the keepers were minor figures, probably in charge only of Hermitage Castle: there was no actual Keeper of Liddesdale at this time.

(iv) Fraser, Douglas, iv, pp. 209, 212, 222, 224.

to him, as Maxwell, Hume and Cesford reported to Hamilton in 1589 (i). Often, however, this co-operation could not be relied upon. In 1526, for example, Andrew Ker of Cesford openly refused to assist the Lieutenant, the 6th Earl of Angus (ii). In the same way it is unlikely that the 8th Earl received much assistance from William Ker of Cesford, who was known to resent every form of interference in his own sphere of influence, and who used the appointment of the lieutenant as the occasion of a lengthy absence from the border country, causing the English officials to wonder whether or not he was still to be regarded as a frontier official (iii). This resentment against the lieutenants, and the consequent failure to co-operate effectively with them, was a natural reaction on the part of the wardens, whose loss of power and prestige, although temporary, was considerable. As the most important individual and the most powerful official on the march, the warden was accustomed to operate with the minimum of interference in his administration. Now he became a subordinate, his personal influence in the march reduced, his actions largely controlled by his superior, and his justiciary powers removed entirely by that clause in the Lieutenant's commission which annulled all previous justiciary commissions (iv).

The appointment of a lieutenant of the marches was therefore a withdrawal of ordinary powers from the warden into the hands of a central official, armed with more extensive powers and supported by considerably greater resources. In some cases this withdrawal involved the temporary eclipse of the warden altogether. More frequently, however, the warden retained, as the lieutenant's deputy, a shadow of his former position, the

(i) R.P.O.S., iv, p.826. (ii) Ry.VIII, iv, 1, 2055.
(iii) Fraser, Douglas, iv, pp.210, 216.
(iv) e.g. Warrender, 1, p.114.

lieutenant exercising supervisory powers over him; this supervision was often resented and avoided by the former warden, either openly or in a roundabout manner. It is probable that effective co-operation between lieutenant and warden depended on a variety of things - the personality of both, the contemporary political situation, and family alliances and feuds. Yet, in spite of open and passive resistance, the lieutenants' power and resources were generally sufficient to enable him to complete his task, and to make the administrative machinery on the borders run more smoothly, for a short time at least.

4. Wardens and Border Commissioners.

Before discussing the relationships between the wardens and the border commissioners, and in particular how power could be withdrawn from the wardens into the hands of these commissioners, it is essential to describe briefly the scope, function and personnel of the commissions.

Special commissioners of both realms were appointed throughout the 16th century to deal with frontier problems and situations regarded, at the time, as being beyond the power and jurisdiction of the wardens. As it was found necessary to appoint commissioners on some thirty occasions between 1513 and 1603 (1), the extent of these problems can be easily judged. The problems which the commissioners were called upon to deal with can be divided into two main categories: the creation of suitable frontier conditions prior to the negotiation of a truce or the signature of a peace treaty; and the examination and redress of those activities and conditions which were liable to lead to the breaking of an existing truce or peace. In the first category was the strong commission of Scots councillors, including the Earl

(1) see Appendix 6 for a full list of these commissions and the Scottish commissioners appointed. Not all the meetings for which commissioners were appointed actually took place.

of Arran, Regent, the Earl of Lennox, Lieutenant of the Marches, John Lord Fleming, and William Scot of Balwery, appointed in 1524 to discuss with an equally notable group of English officials the "commoun weile of baith the realmis" after a series of English attacks on Scotland (1); and similarly, in 1526, 1528, 1533, 1534, 1545 and 1551 (11), commissioners met to try to iron out the difficulties which were creating a state of war between the two countries. These meetings sometimes resulted in important treaties, such as the Treaty of Berwick in 1528, and the peace concluded in 1534 (111); but more often the commissioners' deliberations merely led to local abstentions from warlike activities. In the second category of problem, the commissioners had to deal both with geographical features of the frontier, and with the illegal activities of borderers on both sides of it. For example, in 1538 and 1552, commissioners attempted to eliminate the Debateable Lands of the West march, a geopolitical source of frontier trouble; and again in 1545 and 1563 the definition of an exact boundary between the countries was an important matter of discussion. Illegal border activities, such as transfrontier theft and murder, and illegal fishing, grazing and hunting, were, however, the most frequent causes for commissioners' meetings; and from 1515 to 1597 almost every commission was required to deal with redress of these wrongs in one form or another.

These commissions were essentially organs of the central governments. Their members generally consisted of important council officials, or legal representatives. For Scotland, regents such as James, Earl of Arran,

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- (1) A.D.C., pp. 204, 206.
(11) see Appendix 6 for details of these commissions.
(111) Rymer, xiv, pp. 278, 529.

Archibald, Earl of Angus, and James, Earl of Morton undertook these frontier negotiations with the English; and councillors such as Robert Lauder of Bass, John Lord Fleming, Patrick Lord Lindsay of Byres, and George Young, Archdeacon of St Andrews were similarly employed. The Scots legal advisors on frontier commissions included founder Senators of the College of Justice such as William Scot of Balwery, Adam Otterburn of Auldham, John Campbell of Lundy, William Stewart, Bishop of Aberdeen and Robert Reid, Bishop of Orkney (1).

As Appendix 6 shows, the personnel of these commissions changed continually, and seldom was a group of commissioners reappointed en bloc to serve on a later occasion; yet there were a great number of administrators who acted more than once. William Scot of Balwery served in this capacity on no fewer than six occasions, in 1515, 1524, 1526, 1528, 1531 and 1532; several others, including Adam Otterburn, John Bellenden, James Hume of Coldenknows, John Carmichael of that Ilk, and George Young, acted on at least three

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- (1) Other Senators who served were Thomas Scot of Petgorno, Robert Carnegie of Kinnaird, Henry Balnaves of Balhill, John Bellenden of Auchnoul and Alexander Hay of Easter Kennet; and other commissioners such as Robert Lord Maxwell, Gilbert Earl of Cassilis, Richard Maitland of Lethington, Mark Ker, Commendator of Newbattle, Robert Lord Boyd, and Peter Rollock, Bishop of Dunkeld were associated with the College of Justice as Extraordinary Lords.

See the biographies of the lawlords in Brunton and Haig. Of the 50 or so names in Appendix 6, 7 were nobles, 12 Senators and 6 associated lords of the College of Justice, 9 wardens, 4 local lairds and 14 councillors not in any of the former categories. Some men in the other categories, including some of the wardens were, of course, also councillors.

commissions, and many more served more than once. Some commissioners, such as James Douglas of Drumlanrig, Carmichael, Coldenknows and George Hume of Wedderburn, had in fact themselves previously been wardens. From this, it would appear that at certain points throughout the 16th century there were developing small groups of administrators who tended to specialize in this type of duty, and in border affairs in general, a conclusion which is supported by the fact that many of these same people were responsible for supervising the wardens at other times and in other ways (i). This appointment of persons "well experimented" in border affairs was a deliberate policy on the part of the Scots government (ii).

The commissions were not always composed of central officials; occasionally local lairds, and the wardens themselves, were associated with them (iii). Andrew Ker of Fernihurst was associated as warden with Scott of Balwery and Adam Otterburn in 1528, and, in 1540, with Scott of Petgornie and Henry Balnavis; Maxwell of Terreglis with Bellenden of Auchnoul and Carnegie of Kinneird in 1563; and Alexander Hume of Huttenhall with George Young in 1588. Occasionally local men acted alone; in 1517 Alexander Jardine of Apilgirth and John Carruthers of Holmendis had no central representative to assist them as commissioners in dealing with certain problems relating to the Debateable Lands. Even if wardens and local men were not actually appointed to these commissions, their influence could be considerable. In 1580, Wedderburn was ordered to Stirling to give his advice on border affairs to the Council, concerning the instructions to be given to commissioners; in

(i) see Chap. 4, section 2, pp.210-12.

(ii) C.Scot.P., xii, p.306. See Chap. 7, p.453.

(iii) The wardens, of course, were sometimes themselves councillors.

1596 all the Scottish wardens were summoned before the council for the same purpose, while the following year the Scots commissioners were given power to call all the wardens before them (1). When wardens and other men of the locality were present, or associated with the commissioners in some way, it is probable that their function was basically advisory; for no matter how experienced the central commissioners might have been in border affairs and in diplomacy with England, the knowledge and advice of the man on the spot was of great importance.

But, although the wardens were closely associated both with the commissioners and with the preparation of their instructions, the commissioners' relationship with the wardens was clearly one of temporary supervision. Both the categories of commission already described interfered with the wardens and their normal operation of frontier administration. Some, especially those of 1528, 1534, 1553, 1563 and 1597, were responsible for codification and alteration of those border laws and customs which the wardens were expected to administer; and all those dealing with redress in any aspect appear to withdraw from the wardens some of their basic duties and powers.

In the early history of the wardenship, the warden himself was responsible for negotiating truces with the English warden opposite, and thus to a certain extent created his own conditions for the operation of the machinery of redress. In 1384, for example, Archibald Douglas and Henry Percy concluded an indenture which not only provided for truce on the marches, but also made arrangements for the judicial procedure to be followed if the

(1) H.Mss.C.R., Milne Home, p.50; R.P.C.S., v, p.361; O.Scot.P., xii, p.349. The English commissioners were expected to confer with their wardens in the same way, before proceeding to deal with frontier matters (O.Scot.P., viii, p.71).

truce should be broken by frontier incidents (i). By the 16th century this was no longer true, and, although wardens were present at the meetings which concluded the major codifications of border law in this period, they were there in a minor capacity and generally were not named in the commissions. Thus the central governments, as was to be expected in an age of legal centralization and specialization, undertook the definition of the legal code to be administered by the warden, which governed not only his conduct at international meetings on the frontier but also many of the administrative duties within the march. This was an indirect, but probably deliberate, method of permanent supervision and control for both of the states involved.

The existence of commissions actually dealing with redress of illegal frontier activities - and they form the majority of those meeting in the 16th century - appears to indicate a more direct form of supervision and control of the wardens; yet this over-emphasizes the true situation. In the first place, some groups of commissioners were acting in circumstances where it would have been improper, if not impossible, for the warden to have done so. For example, in 1517, when a commission was appointed to examine an English complaint concerning illegal activities in the Debateable Lands on the West march, it seems likely that Robert Lord Maxwell, the warden within whose jurisdiction the incidents occurred, was regarded by the English as being himself involved in them (ii). Similarly, commissioners were appointed in 1575 and 1585 to examine incidents arising from days of truce at Reidswyre and Redenburn in which John Carmichael, the Keeper of Liddesdale, and Thomas

(i) A.F.S., 1, pp. 713-14.

(ii) Hy. VIII, 11, 2, 3328.

Ker of Fernihurst, Warden of the Middle march, had been involved. These were all cases in which an external assessor was necessary, and no question of supervision arose.

Secondly, some of the complaints dealt with by the commissioners appear to have been discussed between the wardens for some time prior to the appointment of the commission. In 1582, James VI asserted that the main cause of frontier friction lay in the controversies and difficulties on which the wardens could not agree, and suggested that special commissioners be appointed to resolve these difficulties; and the commissioners appointed in 1586 were to discuss those difficult and controversial cases which "can not conveniently be ordourit be the privat auctoritie of the ordinar wardanis, specialie for blude, fyre, and sic uther materis of greatest consequence" (1). That these matters of greatest consequence could be left untackled by the wardens for some considerable time is shown by the dismay of the English government in 1580 when the Scots prorogued a commissioners' meeting which was intended to redress complaints going back to 1563 (11). Although it is difficult to find specific examples of cases not dealt with over these long periods, it is clear that it was one of the primary duties of commissioners to deal with those outstanding complaints on which agreement could not be reached at local level. Cases involving murder or slaughter, for example, caused trouble continuously. The treaty of 1563 declared that these could be settled by the wardens on their own authority, but the Scots wardens in particular felt that these difficult and dangerous cases should be referred to a higher authority. For example, in 1582 Gosford refused to deal with them

(1) O.Scot.P., vi, p.209; ib., viii, p.502.

(11) ib., v, p.472.

on the grounds that he "won according to the annoient custome referre the delivery ... to the Princes and their commissioners"; at the same time Scrope asserted that in twenty years' experience he had had no trouble of this nature and that he had dealt with cases of slaughter with Carmichael, Keeper of Liddesdale (1). Obviously various methods were used in practice, and this encouraged differences of opinion, which could only be settled by a higher authority.

Yet, when all these instances are accounted for, there remain examples of the commissioners dealing with ordinary bills for redress which would normally have come within the jurisdiction of the warden. This, therefore, must indicate some form of control, the quality of which must now be examined.

During the earlier part of the 16th century, the commissioners acted in a supervisory capacity only. They concerned themselves with making the existing machinery of redress operate effectively by arranging for bills on both sides to be collected, by specifying dates on which the wardens were to meet, and by indicating the procedure to be followed at these meetings. This is clearly shown by a memorandum of agreement made by the commissioners in October 1509 (11). The wardens of both East marches were each to collect and send to the other sixty bills "wherein no slaughter is committed"; the malefactors named in these bills were to be arrested before a certain date when commissioners and wardens were appointed to meet at a certain place on the frontier. The meeting thus arranged was to continue day after day,

(1) *ib.*, vi, pp.115, 543. It should be noted, however, that a distinction between ordinary bills and bills including slaughter existed as early as 1509 (Hy. VIII, Add., 1, p.24).

(11) Hy.VIII, Add., 1, p.24.

meeting alternately on the Scottish and English sides of the frontier, until all the bills were dealt with, "one for another, foul or clean". Thereafter bills in which slaughter featured were to be examined in a similar manner. Once the East march was completely redressed, the wardens of the Middle marches were to act likewise. Similar provisions were made by commissioners on other occasions. For example, in 1528, the commissioners, discussing the depredations of certain Liddesdale men, made arrangements for the wardens of the Middle marches to meet to deal with outstanding bills; in 1531 commissioners arranged for bills to be exchanged by the wardens before a certain date, giving the wardens five days in which to arrest the alleged malefactors for the day of truce itself (i).

Some commissioners might at this time have acted more directly. In October 1541 Fernihurst, warden of the Middle march, wrote to the English warden that Scots commissioners had been appointed to deal with bills and "trye and consider quhayre the faltis is, and to do justice and mak redres in all sortis" (ii). This implies that these commissioners were intending on this occasion to take an active part themselves in the proceedings; but on the whole the commissioners at this time were basically concerned with the organisation of the administrative machinery of redress, and although they were actually present at the meetings they organised, they did not normally participate directly in the day's business. Frequently they rejected the idea that they themselves were able to interfere in the proceedings; the Scots commissioners in 1515 asserted that even if a known criminal was in their company at a day of truce, they could not themselves deliver him to the

(i) Rymer, xiv, p.278; A.D.C., p.363.
(ii) Hamilton, i, p.114.

English, but could only encourage their warden to use all diligence for that purpose (i). As late as July 1586 a project of the English government for the commissioners to deal directly with matters of redress was turned down by the Scots, who apparently claimed they could have no authority to do this (ii).

For the greater part of the 16th century, therefore, these commissioners acted in a supervisory capacity; they saw to it that, on certain occasions at least, the wardens did their job. There was in this no real diminution of the wardens' authority either within their marches or in their main relationship with the opposite wardens. This situation partially changed towards the end of the century. The commissioners who met at the beginning of 1588 were responsible for the judgment of bills, and they themselves, not the wardens, declared them foul or clean, and accepted the responsibility for entering pledges. Again, in February 1597 they were themselves responsible for redress (iii). These commissions did diminish the wardens' powers on the frontier, withdrawing from them their basic function of negotiation with the opposite wardens, and circumventing their authority within their marches. The wardens were, in fact, almost equated with the other inhabitants of the marches in the instructions given to the commissioners in 1597 (iv).

This reduction was a natural consequence of the fying of bills by representatives of the central government; for the government, now

(i) Hy.VIII, ii, 1, 863.

(ii) C.Scot.P., viii, p.508.

(iii) R.P.C.S., iv, p.271; ib., v, pp.360-1; C.B.P., ii, 496, 519-24.

In 1596 the English seem to have wished to restore some of the power of the wardens, and rejected the interchange of bills of complaints at commissioner level; this did not affect the judging of these complaints (C.Scot.P., xii, pp.386-7).

(iv) R.P.C.S., v, p.361.

responsible for the delivery of pledges, the arrest of malefactors, the collection of redress and all the other activities connected with the satisfaction of these bills, often chose to deal directly with the inhabitants of the marches rather than through the wardens. This is shown by the order given in March 1588 to John Granstoun of that ilk, to enter certain of his tenants, who had been fyled in English bills, to the council (i); this seems to be connected directly with the meeting of commissioners the previous month. Again, in 1590, many border landowners were cited to produce certain of their tenants before the council, to be handed over to English officials for outstanding bills (ii); this refers back to the same meeting, as the government complains that "oure Soverane Lordis plege lyis in England a lang time bypast". The appearance of these guilty tenants could be enforced by a pecuniary penalty; in one instance this was related to the value of the English bill - the "single and double availe" - and was payable to the central government presumably in addition to the similar payment to the English warden in satisfaction of the bill (iii). These orders after 1588 differ from earlier commands to landlords to produce guilty men in that those apprehended were to be handed over to the council, not to the warden (iv). The council was therefore dealing directly with the borderers to apprehend the malefactors fyled in specific English bills, the bills for which the commissioners had accepted responsibility and had themselves handed over pledges. The council, although there is, from the documents, a nominal connection between king and warden in this matter, would therefore appear to be attempting gradually to

(i) R.P.C.S., iv, p.262.

(ii) ib., iv, pp.792-4, 808.

(iii) ib., iv, p.259.

(iv) cf. e.g. ib., iii, p.263. In 1580 a great number of landlords were charged to enter their men "to the said Warden".

circumvent the wardens' authority, withdrawing from them much of their local power, by taking a very active interest in the redress for certain bills, and by dealing directly with the inhabitants of the marches.

In all this it is essential to notice that the commissioners, except in codifying border laws and in experimenting, in these laws, with new administrative methods, had no authority, either as supervisors or negotiators, to do anything which the wardens could not do, nor to use any methods of obtaining redress which were not available to the wardens. The pivot of the administrative machine was for them, as for the wardens, the day of truce; and these days of truce held by commissioners seem to have been conducted on exactly the same principles as those held by the wardens, already described. Complaints were put in the form of bills, and, to ease negotiation, English and Scottish bills were "balanced" against each other, both in number and in value, exactly as the wardens did (i). This balancing of bills could be an important feature of commissioners' meetings. For example, in June 1586 it affected the date from which redress was to be effected; the English commissioners wished to deal with bills outstanding since 1573, when Morton took over the Regency, while the Scottish commissioners preferred to adopt the accession date of James VI, taking the view that they could claim against the English for their inroads into Scotland in 1570 and balance this against later Scottish activities in England (ii). Similar devices were used by the wardens at a purely local level. The only difference between fyling by wardens and fyling

(i) e.g. in number, in 1509, when each side produced 60 bills (Hy.VIII, Add., i, 87, p.24); and in value in 1590, when James VI suggested that the commissioners on each side, knowing the full value of all the bills, should discharge the other side for like value and quantity (C.ScotP., x, p.346).

(ii) C.Scot.P., viii, p.483. The negotiations appear to have fallen through on this point.

by commissioners was that the central government, partially in the earlier part of the century and completely towards its end, was itself accepting responsibility for the redress of wrongs, instead of relying on the activities of a sometimes unreliable local official. Thus the promise of redress had the advantage of having the full force of the central power behind it. This, of course, might not always have meant very much, as the authority of the council was not always effective in the border region; but it is noticeable that the activities of border commissioners were frequently followed up on the part of the Scots by direct government interference in the internal administration of the area by means of judicial raids (1).

There was, however, little attempt to make this form of supervision permanent; the border commissioners, like the other central supervisors of wardens already described, were among the more important Scottish administrators, and their administrative talents were often required for problems other than those of the frontier.

This intermittent quality characterized all forms of the relationship between the wardens and the central government. The Council gave material and moral support to the warden only when it was absolutely necessary, believing, for the greater part of the century, that these officials should be allowed to act on their own initiative both in negotiation with the English officials and in those aspects of internal administration which were within the sphere of their jurisdiction. In the same way, the varying forms of supervision of wardens which have been described, were applied only when, for reasons of general policy - either internal, or

(1) see e.g. R.P.C.S., iv, p.271; these raids are described in Chap. 5, section 3, pp.288-326.

international - it was essential to prevent frontier affairs getting too much out of control; implicit in this, of course, is the strength and authority of the central government at any particular time, and its ability to apply the methods of supervision which had been devised.

It is therefore obvious that the character of the central government and its general policy will have to be reckoned with in any assessment of the effectiveness of the frontier administration. But before this can be attempted, it is necessary to examine carefully the direct impact of the central authority on the Scottish borders.

Chapter 5

The Council and the Maintenance of Order on the Borders

Owing to the great importance of the frontier region, the Scottish central government was forced to interest itself considerably in border affairs in addition to its concern with the wardens and their administration. The part played by Parliament in this was of little moment. It has already been noted that by the beginning of the 16th century Parliament had lost to the Privy Council the power of nominating wardens of the marches, and any control it may have had over these officials (i). Only two types of activity seem to have been carried out by Parliament, the provision of finance, and the making of legislation concerning the borders. Between 1575 and 1586 taxation was granted by the three estates for border administration on five occasions, and various sums, ranging from £4,000 to £40,000, were authorised to be raised by the normal methods to raise forces to suppress thieves (ii). But at other times the Council seems to have been able to provide money for frontier purposes by itself; for example, in 1589 taxation was imposed for border administration on certain royal lands which had been omitted from the assessments made for the tax for the royal marriage, no parliamentary authority being either sought or granted (iii). The fact that on occasions Parliament was called in merely shows the gradually returning importance of Parliament in money matters at this time, probably caused by the general effects of the rise of prices in

(i) see Chap. 2, section 3, p.68.

(ii) A.P.S., iii, pp.189, 192, 424-6; R.P.C.S., ii, pp.467-9; ib., iii, pp.46, 741-2.

(iii) R.P.C.S., iv, pp.396-7.

the 16th century (1).

Legislation affecting the borders was also passed by Parliament during this period. Most of this referred to the maintenance of law and order in this troublesome region, such as the acts of 1567, 1587 and 1594 (11); by the end of the century a very comprehensive body of legislation had been built up, but in this, as in other matters, Parliament was merely confirming decisions already taken in the privy Council. It was the Council, both in its administrative and in its judicial capacity, which was actually responsible for border policy in the period under review.

The Council was directly concerned, therefore, with much of the detailed administration of the region. The local officials, important though they were, could not themselves keep complete control; as has been noted, the wardens' internal powers were not complete, the sheriffs were not always efficient enough to keep the unruly inhabitants under control, and many of the administrators themselves were involved, directly or indirectly, in the criminal activities of their fellow-borderers. The onus of maintaining order thus fell on the Council as the most important central organ of administration.

1. The Council as a Central Court.

The border reivers at no time limited their activities to inroads against the English, but often attacked their fellow-countrymen in cattle-stealing expeditions and murderous feuds; Scotsmen as well as Englishmen had legal grounds for complaint and for redress of injuries done by them. Many of the local judicial officials were obviously far from

(1) cf. Rait, Parliament, p.492.

(11) A.P.S., iii, p.51 (1567 c.27); ib., iii, pp.461-5 (1587 c.59);
ib., iv, pp.71-3 (1594 c.37).

impartial, and the judgments of their courts could not be relied upon in the face of the maintenance by men of substance of their friends, tenants and servants, and because of the strength of the bonds of kinship among fellow clansmen. The power of the border clans was, in fact, so extensive that it was generally considered by both borderers and 'inland' men to be impossible to obtain either redress from, or even a fair trial of, one of their members; as David Moysie complained, a malefactor who was a "clannit man" was one "aganis quhome the ordinar forme of law can not have execution" (i). Accordingly many complainers found it necessary to take their complaints to the highest central tribunal, the Council itself, which still retained many of the characteristics of a law court.

As a court, the Council heard and gave judgment on many types of border cases, both criminal and civil. Most frequent were those concerning the theft of livestock - sheep (ii), cattle (iii) and horses (iv) - and the invasion (v), occupation (vi) and devastation (vii) of lands; the Council

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- (i) R.P.C.S., v, p.19; of ib., iii, pp.101-2.
 - (ii) R.P.C.S., i, p.280; ib., vi, pp.377, 494-5.
 - (iii) ib., i, p.345; ib., iii, pp.101-2.
 - (iv) ib., ii, p.359; ib., iii, pp.38-40.
 - (v) R.P.C.S., ii, pp.501-2; ib., iii, p.707.
 - (vi) ib., iii, pp.39-40; ib., v, p.168. To the charges of invasion and occupation of lands were frequently added subordinate charges of assault and slaughter of servants, and of illegal detention of the owner. Occupation was generally by force; but David Moysie complained of an allegedly novel method employed by one James Ker, who by means of a forged rental deprived Moysie for three years of the profits of the lands of which he was the absentee owner (R.P.C.S., v, p.19).
 - (vii) R.P.C.S., iv, p.666; ib., v, p.26. Devastation involved the removal of cattle and the destruction of cornbearing land.

also dealt with cases of attempted murder and highway robbery (i). Civil cases concerning the ownership of lands or the demarcation of boundaries also came before the Council, not so much because the lands or the claimants were important enough to merit this irregular procedure, but because of "the inconvenience that thairthrow may follow gif ayther of thame [i.e. the claimants] salbe sufferit to insist in thair privat persuttis" - pursuits which undoubtedly would have led to criminal charges within a very short time (ii). The Council took cognizance of such cases in the hope of preventing by immediate action subsequent criminal activities such as the illegal occupation of the land and the attendant assaults and slaughters. In cases of theft the Lords of Council usually ordered the stolen goods to be restored, or their value repaid to the complainer; and either surety was found by the guilty person as guarantee that this would be done, or the transaction was supervised by a responsible local official such as a warden (iii). When the point at issue concerned the illegal occupation of land, disputed ownership or disputed boundaries, assurance was taken from both claimants not to molest each other until the real owner or the true boundaries were decided by an assise (iv); after the assise had made its decision, the owner of the disputed land was given sasine by the sheriff (v).

During the course of the 16th century this extraordinary business of the Council grew to a remarkable extent, until it was considered advisable

(i) R.P.C.S., i, p.632; ib., iv, p.682.

(ii) ib., ii, p.622; of. ib., ii, p.69.

(iii) R.P.C.S., i, pp.260, 268, 345. When Lord Hume suffered the loss of some 400 sheep he was given permission to recover them, or an equal number, by force if they were not restored (ib., vi, pp.494-5.)

(iv) R.P.C.S., ii, pp.69, 522.

(v) ib., iii, p.72.

to set apart a special day for it. Accordingly the Act of 1587 for controlling the Borders and Highlands provided for the institution of special meetings of the Council to be held on the first lawful day of every month to hear cases concerning the misdeeds of borderers and highlanders (i). In addition a special register of these diets was to be kept. In spite of this detailed arrangement, nothing was done, and cases concerning the borders continued to be entered, along with other business, in the normal way, with no indication that they were heard at any separate meeting of the Council.

Owing to the energetic administration of Chancellor Maitland of Thirlestane, the provisions of the 1587 Act did begin to take effect in June 1590 when an ordinance of the Privy Council referring to the borders, but based on the Act, was promulgated (ii). A special committee of the Council was set up, consisting of the Chancellor himself, the Justice Clerk, Sir Lewis Bellenden of Auchnoul, Sir Robert Melville of Murdocairny, Robert Douglas, the Provost of Lincluden, Sir James Hume of Coldenknows, Sir John Carmichael of that Ilk, and Alexander Hay of Easter Kennet, the Clerk Register. These men formed the nucleus of the Council at the time, and were the most active and regular attenders at council meetings (iii); in addition most of them possessed special knowledge of border affairs - Coldenknows and Carmichael had both acted successfully as wardens, while Bellenden and Melville had long been interested in border affairs as supervisors of wardens, border commissioners and ambassadors to England. This group, three of them forming a quorum, was

(i) A.P.S., iii, p.461.

(ii) R.P.S.S., iv, pp.790-2.

(iii) ib., iv, pp.xxiv-xxvii.

to meet every Monday morning in Edinburgh Tolbooth to deal with border cases and other frontier matters, and they were expected to make a report of their activities to the rest of the Council once a month; the Treasurer was authorised to provide them with money for the purpose of routine administration, and a clerk was appointed to keep a Register of their proceedings. This Register was a folio volume entitled Liber Actarum pones Hybernicae, Insularum, et Maricarum Regni Ordinem; this shows that from the very beginning the intention was to include the Highlands and Islands as well as the Borders within the scope of the activities of this committee (i).

The contents of this volume indicate the extent of the work of the committee. The Act of 1587, which was to regulate its proceedings, formed the first entry, followed by full lists of the names of Border and Highland landlords and clan chiefs, responsible for their dependants; next was a copy of the General Band, by which the activities of the landlords were controlled (ii); and, finally, a copy of the ordinance of 1590. This was all necessary material, and the councillors would require to refer frequently to these pages during the course of their duties. After this introductory section, the volume falls into two parts. The first, from p. lly., forms the record of the committee's activities, commencing with the report of a meeting on 24 June 1590, when an ordinance was promulgated concerning the detention of pledges from border clans. The pages immediately following record similar ordinances and proclamations, complaints relating to the borders, and the decisions in cases heard before the committee until the year 1599; the final entry in this section is an engrossment of the improved General Band of 1602. The second

(i) S.R.O., printed in R.F.C.S., iv, pp.781-814; ib., v, pp.733-48; ib., vi, pp.823-8; cf. Lee, Maitland, p.217.

(ii) for further details of this band, see section 2 of this chapter, pp.253-8.

section, between f.62 and f.86, and between f.92 and f.115, contains the records of acts of caution taken from borderers and highlanders respectively over the same period. The volume ends with a list of the landed men from all over Scotland.

From the very beginning meetings were held in an irregular manner, and Wednesday rather than Monday seems to have suited the convenience of the committee members. Entries in the register were frequent for the first six months, but thereafter became more and more scanty; at the same time border cases began once more to be recorded in the general register of the council. This gives the impression that this experiment with a new administrative unit carried out by Maitland of Thirlestane was at least a partial failure (1), in spite of the energy, enthusiasm and obvious abilities of the councillors who were intended to put it into effect. They were all men who were interested in border administration, but at the same time all were involved in other administrative duties such as Chancellor, Justice Clerk, Treasurer-Depute, Collector-General and Clerk Register, while Carmichael, as an active warden of the West march, was frequently absent from Edinburgh. These men, who were at the very centre of Scottish government, and who were regular attenders at all council meetings, probably concluded that they could attend to border business as well there as in special sessions. The separate register was probably retained for its convenience as a special record of certain border business.

By bringing his complaints before the Council, or before a special central court, an aggrieved party was more likely to obtain justice than in the

(1) But see below, Chap. 6, section 5, p.426, for a partial modification of this view.

local courts; but although the more obvious evils of maintenance and the clan spirit were circumvented by this, it was only partially successful as a method of obtaining justice. Borderers cited to defend themselves failed to appear before the central tribunal, even under the penalties of burning and the escheat of their goods (i); these penalties they held of little consequence, for even when declared outlaw they saw no necessity to go into hiding but openly "hantand all publick places of the cuntrey" would deliberately neglect to take the technical steps necessary to be relaxed from the horn (ii). Nor did imprisonment daunt the border malefactors; for they knew that shortly their master or their kinsmen would "forceably brak up the duris" of their prison, "disappointing thairby the executioun of his Majesties lawis" (iii). And if there was little respect for the local officers of the King's law, there was even less regard for the decisions of a distant central court which seldom had the means of implementing them in territory where the inhabitants were generally hostile to the government and sympathetic to the wrongdoer. Direct contact with the borderers themselves was necessary, and, in particular, the co-operation of the more responsible landlords and clan chiefs.

2. Co-operation and taking order with borderers.

Being based normally in the central lowlands, at Edinburgh, Stirling, Perth or Linlithgow, the Council, attempting in the first place to control the border region from a distance, sought this co-operation by summoning to its discussions on the maintenance of order the most important and most powerful borderers. These men were summoned occasionally to receive instructions or

(1) R.P.C.S., i, p.632; ib., ii, p.359; ib.,iii, p.102; ib.,vi., p.538.
(ii) ib., i, p.307; ib., v, p.161.
(iii) ib., v, p.226-7.

to make their personal submission to the government, more frequently to discuss with members of the council various aspects of the frontier problems and to give them the benefit of their advice based on their knowledge of border conditions at that time.

In 1514, certain borderers were summoned specifically to receive instructions from the Lords of Council (i). But this was an unusual summons, for generally these Lords seem to have been undecided as to the course to pursue at any given time; on this occasion, in fact, a policy had been formed at a previous meeting of the council which these men had failed to attend. Borderers were more frequently summoned to give "their gude advise and counsaile what forme and ordour they sould think maist meit ... far stancheing of [the] stowthis, reiffis" and other crimes prevalent on the Borders; or "to gif their avyse and jugement anent the establissing of universall justice and quietnes" within these bounds (ii). Those invited to such meetings included not only the lords and barons who drew their power and influence from the extent of their lands, but also those lesser landowners whose importance lay in their position as the head of a clan or surname. Those who were summoned "for the ordering of the trublit state of [the King's] Borderis", and who were expected to make some form of submission to the government, were either men who had themselves committed some misdemeanour, or else the landlords or masters responsible for them. The landlords were given 'valentines', lists of criminals dwelling on their lands, and were charged to enter them to the royal judges (iii); the others were to make

(i) A.D.C., p.8.

(ii) R.P.C.S., i, pp.169, 561, 670; ib., 111, p.527; ib., vi, p.136; T.A., xi, p.233.

(iii) R.P.C.S., i, p.169; ib., 11, pp.306-7.

their own submission to the King (i). In 1585, some of this last category, after appearing before the Council and making their submission, were sent to the warden to come to an agreement with him; they had to find surety for their obedience, and then finally were released (ii).

Although decrees were issued by the Council, made with the advice of "gentilmen inhabitantis" of the Marches (iii), there is no record of the advice actually given by the borderers to the Lords of Council on these occasions; but it is probable that it dealt with specific immediate actions rather than general principles. There were, however, certain principles applicable to border affairs which might have been urged on the government on such an occasion by an experienced borderer; these were mentioned in a letter [to be dated ca. 1554] addressed to the Regent Mary of Lorraine by an unnamed man who obviously had considerable experience in border affairs (iv). The writer emphasised four points. Order ought to be taken with borderers, in particular by compelling the clans to give to government human pledges who would suffer the penalty for any crime committed by their fellow clansmen. Secondly, some attempt had to be made to reconcile feuds which had developed among borderers; unless this was done in the early stages, a feud would increase rapidly in area and intensity by reason of the ties of kinship. In the third place, punishment ought to be exacted to the full for crimes committed. Finally, throughout the paper, the writer emphasised that action by the government itself was necessary, even personal action by the Regent; "for your grace mon tak respeiik to thar thingis be your grace self".

(i) R.P.C.S., iii, p.718.

(ii) Newbattle Mss., xi, 49.

(iii) e.g., R.P.C.S., i, p.653.

(iv) Lorraine Corr., pp.379-80. 1554 is the date suggested by the editor of the correspondence; but the present writer suggests 1551 or 1552 as a possible date, and tentatively identifies the writer as Robert, 6th Lord Maxwell.

This was advice for the situation in 1554; but equally these were basic principles of action which, could they have been continuously and effectively put into practice, might have kept the border country under control. But continuous direct action by the Crown was difficult with the elementary administrative machinery at its disposal, and the exaction of the full penalties for criminal activities was equally difficult when those guilty were maintained and supported by lords, barons and men of substance - perhaps themselves councillors, or responsible in other ways for carrying out government policy. The other two points emphasised in 1554 did, however, form the basis of much future policy on the borders; order was taken with the clans and with others, and some attempt was made to reconcile those deadly feuds which, developing with murderous rapidity, so much disturbed the border country. But, as will be shown, neither taking order by bands and pledges, nor the reconciliation of feuds was a new policy in 1554; the writer of the letter was probably intending to suggest the reimposition, after a dozen years of war and disorder, of the administrative system which had operated under James IV and James V, rather than to inaugurate an entirely new policy. These administrative devices were therefore used throughout the century.

(a) Bands. The basic meaning of "taking order" with any person or group was, apart from any implication of punishment for past deeds, which could be and frequently was remitted, the making of a promise by that person or group to "keip and caus to be kept gude reull" within a certain area, a promise guaranteed by certain material securities which varied according to the person undertaking the promise. In the first place, this was the principle of the "band" as used by the Crown as an administrative

instrument. The landed men of any area, by subscribing a band, declared to the central government, which was not itself able to maintain order in that locality, their willingness to assist in this task, either by performing a specific action or, in a more general way, by acting together to keep good rule, each being individually responsible for the good behaviour of his own tenants and adherents. This administrative use of the band, although later extended to the rest of Scotland, originally "was devised for restraining of the misrule of the disorderit persons of the Hielandis and Bordouris" (i); and those borderers commanded to appear before the Council were to subscribe either a band obliging them to carry out, as individuals or as a group, some particular action for the maintenance of order, or a General Band (ii).

By subscribing a band to perform a specific action, a man would oblige himself to apprehend specified thieves living near him, to rise against certain declared traitors or to refuse to assist them; to do any duty, in fact, that the Crown might require at that particular time (iii). Subscription to the General Band, on the other hand, involved the subscriber in much wider obligations, based ultimately on the feudal principle that a landlord was responsible for his tenants. He was himself to keep the peace and obey the royal authority; and he bound himself to rise against all rebels and to apprehend all thieves dwelling on his lands. To this was added responsibility for the activities of those subordinate to him either as feudal inferiors, tenants on his land, or as members of his family and clan; he was obliged to deliver any of those subordinates who had committed any crime to

(i) R.P.C.S., v, p.279.

(ii) A.D.G., pp. 332, 487.

(iii) ib., pp.56, 487; Fraser, Scotts of Duncleuch, ii, p.165.

royal justice (i), and, failing this, to redress the parties injured by the activities of his subordinates either in money or goods. Should the malefactor flee, the subscriber was expected to take over his lands and grant them to another tenant, thus displacing his wife and making the entire family fugitive (ii). Landlords and clan chiefs were expected to hand in a list of those men for whom they accepted responsibility (iii). This list was probably compiled by the landowner himself from the names of those of his nearest kinsmen whom he was willing to guarantee personally, and from the names of those of his subordinates with whom he had come to some contract or agreement either by band of manrent or band of assistance (iv); he would refuse to be responsible for those who had not subscribed bands with him.

Subscription to the General Band was frequently accompanied by a remission for crimes committed in the past not only by the master himself but also by those subordinate to him (v). On the other hand, failure to carry out the obligations of the band involved the subscriber in well known penalties, punishment "be deid, prisoning or confiscatioun of his ... guidis"; and in addition he automatically incurred the penalties imposed for the faults committed by those malefactors whom he had assisted by his action in breaking his band (vi). In the earlier part of the century this punishment was imposed only after trial by assise (vii) which meant that considerable delay

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- (i) No obligation was incurred in respect of a tenant involved in non-criminal actions such as debt (R.P.C.S., v, p.250; ib., vi, pp.66, 174).
(ii) Warrender, i, No. xxv; R.P.C.S., ii, pp.549-52; ib., iv, pp.787-9.
(iii) A.D.C., p.341. (iv) cf. Fraser, Annandale, i, pp.37-9.
(v) A.D.C., pp.312,352; R.P.C.S., ii, p.549. See also section 3 of this Chapter, pp.313-14.
(vi) R.P.C.S., i, pp.651-2; ib., iv, p.789. For an early example of a conviction for breaking the band see Pitcairn, i, p.208.
(vii) R.P.C.S., ii, p.552; ib., iii, p.74.

occurred before they were put into effect; and, as cases sometimes involved long and tortuous litigation, the offender by the delay might often escape the consequences of his fault. The 1587 Act of Parliament provided a more automatic device by requiring those subscribing to the provisions of the General Band to find both caution and surety at the same time for the performance of their responsibilities (i). Direct action could then be taken against the subscriber himself or a monetary penalty exacted from his surety, whichever was more convenient, thus avoiding some of the delays of litigation (ii).

This improvement was followed by further improvements in 1602, when at Dumfries a new text was compiled which was later described as "the best and most strait band that ever was made in the borders" (iii). It contained all the existing provisions expressed in much stronger language; the subscriber personally undertook to reject all criminal activities, and to annul all bands of friendship he had made with thieves; in addition to undertaking to enter his own men to justice, he declared his intention of entering all thieves found on his lands, doing this immediately on receipt of instructions and not warning the fugitive first; at all times he would rise with his fellow subscribers to hunt down thieves and rebels, and never would he assist or defend any thief, nor solicit favour for him, nor bear any grudge against those who apprehended him (iv). This final version of the band, which closed several loop-holes implicit in earlier versions scarcely had time to operate effectively in the century under review; it did, however, play a part in controlling the "middle shires" in the post-union

(i) A.P.S., iii, pp.461-7; R.P.C.S., iv, p.726; ib., v, pp.733 et seq. This seems to have applied only to border and highland subscribers, cf. ib., v, pp.279, 437.

(ii) R.P.C.S., iv, p.709; ib., vi, pp.179, 377.

(iii) Balfour, Annales, ii, p.68.

(iv) R.P.C.S., vi, pp. 825-9.

period.

The General Band as an administrative device was, as has been observed, intended primarily for use in the Highlands and on the Borders, and it was used regularly, in the latter area at least, throughout the entire 16th century. It is necessary to emphasise this, as the suggestion has been made that the General Band came into existence as a result of the 1587 Act for controlling the Highlands and Borders (i). But the date 1587 is in this context of little significance, being merely the date of Parliamentary ratification of certain long-established administrative practice on the border. In fact the 1587 Act did not itself make use of the term 'general band', and, although it mentioned some of the measures which subscribers of the band undertook to observe, and (as has just been noted) improved on earlier practice in at least one respect, it contained much else besides. The General Band cannot be equated with this Act, still less did it have its origin in it; in the first place the term had been in general use for some time before this date, at least from 1569 (ii), and secondly the form of the band itself is even earlier in date.

This can be proved by a comparison of the texts of various administrative bands of this period. The basic text of the General Band, which forms the norm of the comparison, is that version of it engrossed among the introductory material in the register begun in 1590 by the sub-committee of the Council which dealt with border affairs (iii). This text conforms almost exactly with the text of a band signed by a group of borderers at Jedburgh

(i) Source Book, iii, p.261; Cunningham, p.108; Lee, Maitland, p.129.

(ii) R.P.C.S., i, p.652; ib., ii, p.549; ib., iii, iv, passim (v. index).

(iii) ib., iv, p.787. See above, section 1, p.247.

in 1561, known from a later copy and designated in that copy "the generall band" (i). This in turn follows very closely the text of another band, also signed at Jedburgh by a group of border landowners in 1551 (ii). The administrative device known as the General Band was therefore in operation in almost exactly the same form as it was at the end of the 16th century as early as 1551, and may even have been designated by that term from 1561 - although this latter point cannot be proved, the date of the Warrender copy not being known.

The idea of exacting from a group of borderers a bond of obedience to and assistance for government officials was even older than this. In 1529 it was stated that "divers ... barouns and heidismen [of the West March] ar bundin be ane generale band for gud reule conforme to the bandis maid to the Kingis grace be the heidismen of the Mers, Tevidale, Selkirk and Peblis" (iii); this shows the extent of the administrative activity undertaken by James V at the outset of his personal reign, but there is little direct evidence concerning the exact form of these bands. In 1530, however, Maxwell talked of his "generale band" (iv) in terms linking it with the band he subscribed in August of that year when he, along with the other wardens, was released from ward to take up his duties as warden again. The terms of this band (v) were remarkably similar to those of the General Band of the end of the century, particularly the responsibility for subordinates, the obligation to deliver them to justice, and the hounding of malefactors, with their families, from the land. In the same way, when Gosford, along with other Kers and

(i) Warrender, i, no. xxxv.
(iii) A.D.C., p.312.
(v) ib., p.334.

(ii) R.F.C.S., ii, pp.549-52.
(iv) ib., p.341.

Rutherfords, were convicted in 1538 of failure to observe a band to the king, the same points were specifically mentioned - the failure to deliver certain rebels to justice, and to evict them from their lands (1). It is obvious that the principles of the General Band operated throughout the personal reign of James V in much the same way as it did later in the century under James VI.

These principles can be traced back even further still. In 1524 it was suggested that "all the lardis and hedismen ... [on the borders] ... be bundin for thare men tenentis and servandis ... for keeping of gud reule", a suggestion put into practice by Angus in the March following; more vague was the proposal in 1503 to take "ane band for tewidale"(11). The General Band, far from being a late development in border administration, would therefore appear to have been in operation in one form or another throughout the entire 16th century, and possibly had its origins in the 15th.

(b) Pledges. The borderers who, invited to attend meetings of the Council, were persuaded to subscribe either particular bands or the General Band, thus placed their lands and goods in legal jeopardy; that is to say, these lands and goods, which the Crown could if necessary seize by distraint, were the material security guaranteeing their promise to maintain order among the inhabitants of their lands. But this obviously applied only to a certain section of border society, the feudal landlords responsible for their tenants, and those semi-feudal heads of clans, also landed men, responsible for their tenants and clansmen. It could not apply to the heads of the lesser clans and surnames who had little or no landed property, and whose moveable goods were so moveable as to prevent effective distraint

(1) Pitcairn, 1, p.208. Ouseford appears to have been dismissed from his office of warden for this offence.

(11) A.P.S., 11, pp.247, 286; A.D.C., p.218.

by any royal officer. Land, the basic form of wealth was the most effective guarantee; but if no landowner would accept responsibility for such a clan or group, another form of material security for the maintenance of order had to be provided. This was found in the entry to the government of human pledges (i).

The writer of the document addressed to Mary of Lorraine (ii) illustrated the principle of this; there was to be entered to the Crown "of everri brenche of the clane tua ... that in cais the clan brek, your grace may haif ane to punes and ane uther to keip to gar thame stand aw be for". Basically the principle was the same as that of the General Band. The clan, or those members of it for whom the pledge accepted responsibility, undertook to keep good rule. They would not assist or reset thieves, but on the contrary would rise in pursuit of them; any clansman accused of any crime would be entered before the justices to face the penalties. The pledge himself was responsible for the execution of this latter condition, and, should he fail to produce the culprit, would himself be punished according to the nature of the crime. The clan also undertook to make redress for any of their illegal actions, either through the Wardens to English complainers, or directly to their fellow Scots; the pledge once more was responsible for these payments - sometimes threefold - should his kinsmen fail in this obligation (iii). The sole difference between the General Band and the pledge system was that the material security offered for keeping essentially similar promises was, instead of lands, goods and money, the life of a human pledge.

(i) of. Fraser, Douglas, iii, p.286.

(ii) see above, p.251.

(iii) Fraser, Ammandale, i, p.25; R.P.C.S., ii, pp.42, 368; ib., xiv, p.368.

The individuals demanded by the government as pledges were generally the clan chief himself, or his son; or in the case of lesser groups or "gangs" (sic) within the clans, the leader of that group. In 1569, for example, Martin Elliot of Braidlee, head of this branch of the clan of Elliot of Reidheuch, entered himself as pledge for that clan, as did Archibald Armstrong of Mangerton for his branch of the clan; John Carruthers, grandson of the Laird of Holmendis, was pledge for the Laird's kinsmen and tenants, and Willie Graham, son of John Graham of Canonby was similarly pledge for his family(1). Perhaps the central authorities thought that without its leaders a clan would be too disorganised to have much capacity for illegal activities; but more likely they believed that the clan would restrain its marauding activities more if punishment was going to affect the head of the kin rather than any lesser man.

The pledges, once secured, were expected to transfer themselves, in the custody of a royal messenger and at royal expense, to places far from the borders, generally North of the Forth. The intention was originally to keep them in royal castles; but these were so few and the pledges sometimes so many that this was impossible, and a number had to be dispersed among various noblemen and barons with strong castles, who were expected to accept the responsibility of keeping them (ii). The landowners, naturally enough, were not always willing to accept receipt of the pledges; John Hamilton of Stanehouse at first "schot the said Gawen [the pledge] to his yet", but later accepted responsibility for him (iii). Although pledges were occasionally

(1) R.P.C.S., ii, pp.42-50.

(ii) A.F.S., iii, p.435; T.A., ix, p.407-8; ib., x, pp.231, 263; Fraser, Wemyss, iii, p.25.

(iii) R.P.C.S., iii, p.38.

placed under royal control (i), the main burden of their keeping was felt by these landowners of the inland country. Pledges were not invariably placed beyond the Forth; some in 1569 were placed in the castles of Edinburgh, Borthwick, Neidpath and Roslin (ii) and others in 1564 with the lairds of Lochinver, Carleis, Netherpollock and Bomby, landowners of Kircudbright and Renfrewshire (iii). But the majority of landowners burdened with border pledges did live North of the Forth - Stirling of Keir and Ray of Melginsche in Perthshire, Wemyss of Wester Wemyss in Fife, Buchanan of that Ilk in Stirling, Arbuthnot of that Ilk in Kincardine, Forbes of Monymusk, Graham of Fintry, Irving of Drum and Stewart of Doun in Aberdeenshire.

Since the individual pledge had not yet incurred any penalties, his enforced imprisonment was not necessarily a hard one, and having found caution and surety not to escape, he could be granted free ward and liberty of action within a certain area of his place of imprisonment (iv). Should he subsequently escape, his surety, not his keeper, was liable to a penalty (v). The quality of his entertainment fitted the rank of the pledge; he was provided with "meit, drink and bedding" at a cost not to exceed 13/4 per day, and one at least had with him in ward his own horse and personal manservant (vi). The expense of keeping him was borne by his keeper, although if warded in a royal castle the pledge might be required to pay for his own upkeep (vii). And lest even this mild form of detention should prove tedious for the pledge, arrangements were made for him to be relieved in ward after a short time by

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- (i) R.P.C.S., iii, pp.322, 328; Fraser, Wemyss, iii, p.19.
(ii) R.P.C.S., ii, pp.54-5. (iii) ib., ii, p.363.
(iv) Fraser, Wemyss, iii, pp.25, 26; Fraser, Maxwell of Pollock, ii, p.142.
(v) Fraser, Wemyss, iii, pp.9-10; A.D.C., p.636; R.P.C.S., ii, pp.22, 369-70; ib., iv, p.266.
(vi) Fraser, Wemyss, iii, pp.9-10, 32-3; R.P.C.S., v, p.450; ib., vi, p.247.
(vii) A.D.C., p.291; R.P.C.S., iii, p.322.

another member of his clan, and by 1569 a regular rota system had been instituted (i). Nor were the interests of the keeper always ignored; after a period of time he could be relieved of his responsibilities, and the pledge transferred elsewhere (ii). The pledge was to be released finally only on instructions from the government, and probably then only if the clan for which he was security had been able to find a landowner willing to accept responsibility for it under his own General Band (iii).

The pledge, therefore, was the material security which guaranteed the good behaviour of the clan; and he was liable to face personally the penalties for the activities of his kinsmen. When a judicial raid on the borders was contemplated, and complaints against thieves were requested, the pledges were at the same time recalled from their baronial keepers to a secure royal control more convenient for taking action against them should any complaint be made against their clan (iv). Yet there is little evidence of direct action being taken against these pledges (v), largely because the majority of them had either escaped from their keepers (vi) or had been released by them without authority on giving a promise to return (vii); generally little objection was raised against the unlicensed release of a pledge provided the keeper was able to produce him within a short time. The prevailing attitude of the keeper seems to have been that of offering hospitality

(i) Fraser, Wemyss, 111, pp.9-10, 17, 26; Fraser, Scotts of Buccleuch, 11, p.341; R.P.C.S., 11, pp.52-5. This might have been modelled on the rota system set up temporarily in 1530 when Maxwell's son, as pledge for his father, alternated monthly in ward with two of his uncles (A.D.C., p.335.)

(ii) Fraser, Wemyss, 111, p.15; R.P.C.S., 111, p.33.

(iii) Fraser, Wemyss, 111, p.33; Fraser, Annandale, 1, p.25.

(iv) R.P.C.S., 111, pp.306-8.

(v) In 1527 Angus executed 12 pledges (Buchanan, 11, p.157). But the present writer has found few other examples of action of this nature being taken against a pledge.

(vi) R.P.C.S., 11, pp.369-70, 514; ib., 1v, p.346.

(vii) Fraser, Wemyss, 111, pp.16-7; R.P.C.S., 11, pp.632-3; ib., 1v, p.323.

to his social equals, rather unwelcome guests, who could not immediately be turned from his doors but whose departure, regardless of governmental instructions, was not to be delayed too long. This attitude jeopardised the success of the system; it could operate effectively only if pledges were warded in royal castles and at royal expense.

But, lacking both money and castles, the government introduced various legal measures towards the end of the century in an attempt to overcome these difficulties. The provision that pledges should be kept far from border influence in houses north of the Forth was more rigidly enforced, and later lists of pledge-keepers show complete insistence on this (i). Lest pledges should escape while in transit to their places of imprisonment, an elaborate convoy system, under the control of the sheriffs, through whose jurisdiction the pledges had to pass, was evolved by Morton in 1575 (ii). In addition to this, an Act of Parliament of 1579 urged keepers of pledges to detain their guests securely until given official instructions to release them; this was reinforced by many personal letters to the lairds involved in this task (iii). At the same time the issue of warrants for the release of pledges was more strictly controlled, and, lest a single official or councillor seek for personal reasons to release any particular individual, each warrant after 1595 was to be signed by the King and seven members of the Privy Council, including the Chancellor and the Justice Clerk; in addition to these signatures, those of a warden or lieutenant of the march, as very interested parties, might also be required (iv).

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- (i) R.P.C.S., iv, pp.332-3; ib., v, p.740.
(ii) ib., ii, pp.477-8.
(iii) A.P.S., iii, p.118; Fraser, Wemyss, iii, pp.34-5.
(iv) Fraser, Wemyss, iii, pp.32-3; R.P.C.S., iv, p.346; ib., v, pp.466, 739.

The most important innovation, however, was to levy fines on the keeper should the pledge escape. This new regulation was instituted in 1575 by an order of the Regent Morton and immediately put into effect; if the pledge escaped, the keeper would incur a penalty of £2000 - a contrast with the position twenty years previously when in such an eventuality a keeper was unlikely to incur any danger at all (i). After the fall of Morton, the system seems to have lapsed for a time, for there was no mention of the fine when pledges were placed in 1587 (ii); but these fines were authorized once more by legislation that same year, and were uplifted in 1590, while in 1595 the penalty of £2000 was to be imposed regardless of the fact that the pledge had already found surety not to escape (iii). Naturally enough the burden of these penalties brought complaints from those commanded to keep pledges; so strong were these complaints in 1579 that the promise was given that some of the pledges would be redistributed and kept only in royal castles (iv). The reimposition of the fines in the last decade of the century caused some of the complaints to be renewed, and, while willing to offer hospitality to the pledge, many barons refused to accept the responsibility for detaining him against his will (v). In face of these complaints it was found necessary to pass an Act of Parliament in 1600 declaring that no baron could refuse to accept the custody of a pledge (vi). Yet many landowners continued to complain; as late as 1601 John Wemyss of that Ilk declared the responsibility with its attached penalty was "a noveltie to him and a burding quhairwith nane

(i) R.P.C.S., II, p.477; Fraser, Wemyss, III, pp.9-10, 17.

(ii) ib., III, pp.25-6.

(iii) ib., III, pp.32-3; R.P.C.S., IV, p.792; A.P.S., III, p.463.

(iv) Fraser, Wemyss, III, p.19.

(v) R.P.C.S., V, p.1.

(vi) A.P.S., IV, p.236.

of his predecessors wer burdenit", and was released by the Council from his obligation, owing to the special circumstances of his case (i). Thus, although many landowners incurred liability for these new fines, and the Treasurer was authorised to collect them rigorously (ii), it is clear that payment could be evaded on the keeper pleading his case (iii).

The regulations for the entry of pledges were also gradually altered. In 1599 the Crown attempted to choose the individuals who were to be the pledges for any particular clan or group; the insistence on clan chiefs and their immediate relatives appears sometimes to have been dropped and the pledges requested were to be notorious thieves aged between 25 and 50 - old men or boys were regarded as insufficient security for the good behaviour of their kinsmen (iv). At this time, too, a pledge book was kept by a central official to record the entry and keeping of pledges; formerly each warden or lieutenant kept a pledge book as his own personal property which, naturally, was seldom made available for the use of his successor in office, and this innovation implies an increasing administrative specialisation on the part of the central government. In addition the crimes for which the pledge was bound were more closely defined. He was liable only for actions committed in the course of thieving expeditions, and action could not be taken against him for slaughters or murders committed by the clan in the course of a blood feud; a limiting date was fixed before which the pledge was responsible for no actions of the clan (v). This measure, which acted in favour of the pledge, was counterbalanced by edicts

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- (i) R.P.C.S., vi, pp.247-8.
(ii) ib., iii, pp.59, 63.
(iii) ib., ii, pp. 626, 632-3.
(iv) ib., vi, pp. 842-3.
(v) ib., v, p.197.

threatening more rigorous action against the pledge if the clan should transgress, even to the point of execution (i).

These measures, although they closed certain obvious loop-holes in the procedure of taking order with the clans, really did little to make the pledge system permanently more effective. The pledges continued to escape, with or without the connivance of their keepers, and the clansmen seem to have taken little regard for the lives of their imprisoned kinsmen, continuing their normal thieving expeditions; this latter fact was probably the result of the entrance of lesser men as pledges in place of clan chiefs and their sons. In 1599 the Council considered that the pledge system had broken down, temporarily at least, for these reasons (ii). The new organisation tended to produce an ever-increasing opposition among both clansmen and the baronial keepers of the pledges, leading to resistance to the demands of the government in this matter. This is merely one more instance of the difficulties of administration in a country where so many of the responsibilities of public authority had of necessity to be placed in the hands of private individuals.

"Taking order" on the borders therefore implied a twofold process. Landed men had to accept responsibility for their subordinates, tenants and clansmen, by subscription of the General Band, whereby they offered as security for the continuation of good order either their lands and goods, or a sum of money ultimately derived from the fact that they owned land; their land, the real source of their power and wealth, was at stake if they failed

(i) R.P.C.S., iv, p.796; ib., v, p.200.
(ii) ib., vi, pp.45-6.

in their responsibility. Men who, although leaders of a clan, possessed no land, had to accept a similar responsibility but offering as security a human pledge, frequently themselves, on whom punishment could be executed; their own life, or that of a near kinsman, was at stake, and they depended on the strong bonds of kinship which united them with their clan to prevent failure in their responsibility and to keep their own skins whole (i). Both methods were founded on sure principles and, if properly put into operation, should have proved exceedingly effective, as the adviser of Mary of Lorraine foretold; failure in this was due to administrative inefficiency in some form, to financial stringency, or to over-riding political considerations, rather than to any fault in the idea behind the system.

(c) Feuds. This adviser's second main suggestion (ii), that feuds on the border should be reconciled if possible, was also taken to heart by the Crown. When he emphasised the fact that "the natour of the pepell and the effectiouns [i.e. kinship] at is amangis than" caused "the common weil [to] pereche" he was merely pointing out an obvious truth; much indeed of the turbulence of the marches was attributable to the prevalence there of deadly feuds among the nobles, barons and clans, and it was always recognised that these feuds had to be removed before any effective administration could be imposed on the area (iii).

The machinery devised by the Crown to staunch these feuds in theory contained three steps. In the first place each party to the feud was

(i) Both methods of taking order can be seen being put into action simultaneously in R.P.C.S., iv, pp. 796-7.

(ii) see above, p.251.

(iii) R.P.C.S., vi, p.46.

required to subscribe a band of assurance suspending both physical and legal activities against the other group until a certain date, by which time it was hoped a more permanent settlement would be reached; this band was reinforced by "sikker souirtie and laborrows" found by each party (i). It was essential for both sides in the dispute to subscribe; assurance given by one party did not take effect until the other group had also subscribed, and continued failure to subscribe could lead to the warding of the recalcitrant persons (ii). In special circumstances it was possible to reach a temporary concord without giving assurance. In 1596 the Kers of Fernihurst refused to submit to judgment their controversy with Robert Ker of Gosford over the slaughter of William Ker of Anorum, or to give assurance, because Anorum's children, the interested party, were still minors. They were willing "in talkin of concord to tak the said Sir Robert be the hand", which they did in presence of the king and Council, but reserved their final attitude until the coming of age of Anorum's children (iii). But normally assurance was required, and if the feud had not been reconciled for any reason during the period of assurance, both parties were expected to renew or continue their bands of abstinence until a later date (iv).

The second step was the legal examination of the causes of the feud, held in the presence of the entire council, or of members delegated for the purpose. Occasionally the warden would be involved in this; Gosford's

(i) R.P.C.S., i, pp.152-3; ib., ii, p.544; ib., iv, p.98. The process of lawburrows was available to anyone suspecting bodily violence from another party. The complainer applied for letters of lawburrows from the Court of Session, Court of Justiciary or Sheriff court; these obtained, the party complained of had to find caution that he would leave the complainer unharmed. If he failed in this, he was put to the horn, and violation of the bond led to liability for the monetary penalty (James A. Reid : "Lawburrows", Jur. Rev., xv, p.417).

(ii) R.P.C.S., vi, pp. 227, 419.

(iii) ib., v, p.273.

(iv) ib., iii, pp.100-1; ib., iv, p.210.

commission in 1581 authorised him to attempt to settle "the particular debaithis and troubles" among the inhabitants of his wardenry, and the following year he was ordered to hold a justice court at Jedburgh in which cases resulting from feuds were to be dealt with (1). But normally the business of quieting feuds appertained solely to the Council, and even on this occasion James Haliburton, a councillor, was ordered to be present to act with and supervise Gosford. Some parties, either voluntarily or under compulsion, submitted their cases completely to the Council's arbitration, accepting its decision in advance; the Armstrongs of Arkilton and the Elliots of Bredaill, for example, did this in 1579 (ii). But the more normal procedure was for each group to nominate certain of their friends, who were to attempt to settle the issues between them "that be commonn travell of the foirsaidis freinds sum gude end and conclusioun may be takin tuicheing the feid"; this "amicable and freindly arbitrimint of freindis" took place in the presence of the Council, and only if no agreement could be reached by such means were the parties willing to submit to a judgment by the Council. Scotts and Kers, Maxwells and Johnstones, Elliots and Pringles - all noted feuding families - took advantage of this method of settling their disputes (iii). At these meetings of arbitration the principals on each side were to be accompanied by only a few followers, unarmed, lest any occasion of riot be given (iv).

The third and final step was taken at these meetings. This was the acceptance of some form of reconciliation and settlement of the feud by both parties and the making of a record of it in the form of a contract. If

(1) R.P.O.S., iii, pp.345, 448-9. (ii) ib., iii, pp.166-9.
(iii) ib., ii, pp.422-3, 453-4; ib., vi, p.48; ib., i, pp.215-6.
(iv) ib., iii, p.467.

an original cause of the feud could be isolated, apart from the general tension created by the existence of two families increasing their power side by side, the party judged guilty of it was expected to make some form of moral submission to the other, and to give some form of compensation. If some members of the guilty party were unwilling to perform the submission or to associate themselves with the compensation, the concord could nevertheless be completed, these people being specifically declared to be standing apart from the settlement, and thus still at feud with the other party (i). On the other hand it appears that the acceptance of submission and compensation had to be agreeable to all the kinsfolk of the injured party (ii), and only when this acceptance was assured could a contract of settlement be drawn up incorporating the terms of the agreement, and the feud be declared legally at an end.

To show the type of settlements made on these occasions, three of these contracts will be examined. All are concerned with the feud between the Scotts and the Kers, which continued throughout most of the 16th century and which was the cause of considerable tension on the Middle march. The first contract was made in March 1530, following on the assassination of Andrew Ker of Cessford by Elliot of Stobs, an ally of the Scotts, at the battle of Melrose in 1526; it was almost certainly made as the result of Crown pressure as Walter Scott of Branxholme, Walter Ker of Cessford and Andrew Ker of Fernihurst were associated together in the wardenship at this time, and it was essential for the proper execution of James V's policy that administrative efficiency should not be impaired by this local tension (iii). The second,

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- (i) Scott, Antiquities, ii, App. ii, p.xx.
(ii) R.P.O.S., i, p.423.
(iii) Scott, Minstrelsy, i, App. 4, p. 191.

dated March 1565, was made between Walter Ker of Gosford and the curators of Walter Scott of Branxholme, the dispute arising out of the murder of the elder Walter Scott by a group of Kers in 1552 (1). The third, made in 1569, was a development from this, and compassed some of those Kers, such as Andrew Ker of Hirsell and Walter Ker of Dolphinton, who had not taken part in the earlier concord (ii).

These contracts fall naturally into two sections: the former arranged for submission to be made by the guilty party during the course of a religious ceremony; in the latter arrangements were made for a marriage to take place between representatives of the two houses. Before the Reformation the guilty parties would perform a pilgrimage and have masses said for the souls of those killed by them in the feud. The 1530 contract shows this clearly. Both parties, each being judged to a certain extent guilty, undertook to make a tour of four Scottish shrines - Seone, Dundee, Paisley and Melrose; the Scotts were to pay for masses to be said daily for the deceased Kers for five years, while the Kers were to arrange for daily masses for the Scotts for three years. This ensured that the concord reached between the feuding parties received divine blessing. After the Reformation the same object was achieved by a slightly different ceremony. The party judged to be the more guilty was to attend a parish church and there, during the course of the service in the presence of the injured party and the entire congregation, ask on his knees God's mercy for those who had been killed in the conflict, and seek forgiveness from his former enemies, who, by the terms of the contract,

(1) Scott, Antiquities, ii, App. ii, p.xviii.
(ii) ib., p. xxvi.

were bound to grant it. In 1565 Gosford agreed to perform submission in this form to young Brankholme at Edinburgh in St Giles Kirk, while four years later similar submission was to be made to him at Melrose by Ker of Corbett and others.

The marriage provisions form the most interesting part of these concords, in as much as any compensation to be made to the injured party was arranged in this section. In 1530 Brankholme agreed to marry his son and heir to one of Walter Ker's sisters, he paying to Ker, the injured party, a competent portion to be agreed on by both sides to the dispute. The 1565 settlement was more complicated, providing for a double marriage; Gosford, this time the guilty party, promised to marry his son Thomas to Brankholme's sister Elisabeth; he was to receive no tocher with her, and he was himself to provide the couple with "ane honest and reasonable sustentatioun and loving offerand to thair estait and conditione" by infefting them conjunctly in certain lands. George, eldest son of Andrew Ker of Fawdoneyde, was to marry Janet Scott, Brankholme's aunt, as soon as both of them were old enough; once again the Kers were to make the financial provision for the couple, and if for any reason the marriage did not take place, were to pay 1000 merks to Scott. In 1569 a similar marriage between minors was proposed, between John Ker, grandson and heir to Andrew Ker of Hirsell, and Elisabeth Murray, Brankholme's uterine sister; they were to be infeft conjunctly in the lands of Hirsell and, again, if the marriage did not take place, a monetary penalty was to be exacted. Lest marriages arranged between very young members of the feuding families should not take place owing to the premature death of one of the children, alternative names were always given in the contract, generally those of their younger brothers or sisters. These

marriages were intended to link the families together and permanently reduce the social tension which existed between them. In the circumstances thus created, it was hoped that any further outbreak of distrust could be settled amicably and without resort to violence, by submitting the trouble to the arbitration of a group of people nominated in the contract. This, if it were done in every case, would eliminate a considerable portion of the disturbance in the frontier area, making it much more easy for the central government to control the region adequately.

But these attempts of the Crown to deal with this specific cause of turbulence on the borders were not always completely successful. Occasionally the groups at feud with each other would fail to present themselves before the Council, so that arbitration on their dispute could not take place (i). More frequently the assurances subscribed under the persuasion of the Lords of Council were violently broken by the actions of one or other of the parties, and, with the feud no nearer reconciliation than before, the persons who had guaranteed the assurance were forced to pay part at least of the surety money, half to the Crown and half to the violated party (ii). Even when a contract was concluded, its terms were not always completely fulfilled. For example, none of the marriages arranged in the contracts discussed above took place, and the feuds re-opened at a later date. Twelve years after the contract of 1565 had been concluded, the Scotts and Kers were openly at feud again, and the Council, taking cognisance of this, arranged

(i) R.P.C.S., ii, p.453; ib., iii, p.562.

(ii) ib., ii, pp.534-7, 591-2; ib., iii, p.532.

for the arbiters to meet and for an assurance to be agreed. During the course of the arbitration, Branzholme asserted that, since the marriage between George Ker of Fawdonyside and Janet Scott had not taken place and the 1000 merks penalty had not been paid, he and his kinsmen no longer felt bound to keep the peace. This apparently being the only cause of the reopening of the feud, the Lords of Council, in January 1578, ordered Ker of Gosford to pay the monetary penalty, which was done the following month (i). In spite of all these difficulties, many bonds of assurance were kept and contracts made and kept; some reconciliation, although sometimes short-lived, was reached, and the government's task made more easy.

The Council in its activities in this matter did not lose sight of its primary aim, the extension of the royal authority in a turbulent area; parties under assurance were expected to co-operate with each other and with the royal officials in the pursuit of malefactors, even over each others' lands (ii), and bonds of assurance frequently contained clauses declaring that the subscribers would "behave thameselffis as dewtifull and obedient subjectis to our Soverane Lord, his Regent, authoritie, and Wardane" (iii). The Council, therefore, by taking an interest in the 'deidlie feids' of the border barons and lairds and attempting to reconcile them, not only decreased the turbulence of the district to a certain extent, but also directly increased the impact of the central authority there.

But feuds themselves often developed from, or created, conflicts of jurisdiction. In these cases the Crown policy was, particularly towards the end of the century, to minimise the force of the feud by eliminating

(i) R.P.C.S., ii, pp.643, 665, 671.

(ii) ib., i, p.216; ib., iv, pp.89-90.

(iii) ib., ii, pp.610-1.

conflicts of jurisdiction. A man at feud with an official was granted exemption from his power and himself given adequate jurisdiction over his own followers which he exercised directly under the central government (i). This clarified one of the points at issue between the feuding parties, and any subsequent disturbances caused by disputed jurisdiction could easily be settled in a central court of law. The tendency developing from this was therefore for the disputants to settle their difference by resort to litigation, and litigation became a new way of carrying on feuds (ii).

The Council, in seeking to establish a more direct contact with the borderers with the object of establishing law and order and implementing the decisions of the central judicial tribunals, accordingly sent for the more responsible barons, landlords and clan chiefs, asked their advice, and sought their voluntary co-operation by subscribing the General Band and entering pledges; in addition, it sought to relax tension between individuals and between kinship groups, and to reduce one of the major causes of disorder by resolving the feuds which arose between them. But this policy, although it was not entirely ineffective, could not be completely successful when operated from a distance. Convocations of borderers could bring together in the confined limits of the capital men who were sworn enemies, and who thought little of continuing in the narrow streets their border feuds, although these were nominally suspended temporarily by royal decree for the duration of the conference (iii); increased turbulence rather than good order was the

(i) e.g. G.Scot.P., xii, p.52. For Fernihurst's exemptions from Gosford, see Chap. 3, section 4, pp.170-3; see also Chap. 3, section 5, p. for other examples.

(ii) Litigation, of course, was a feature of feuds throughout the 16th century; the new point was that it was becoming the dominating feature. This tendency existed also in England and Wales at this time, cf. Penry Williams, 'The Welsh Borderland under Queen Elisabeth', Welsh History Review, i, pp.30-1.

(iii) R.P.C.S., 111, p.628.

outcome of many of these meetings. In addition it was always extremely difficult to persuade the borderers to make the journey to Edinburgh or wherever else the Council was in session at the time, as they often had reason to suspect the intentions of the government. As many of them were fugitive or at the horn for some slight offence, they were naturally unwilling to accept an invitation which might have unfortunate legal consequences for them. To alleviate this, the Council often had to grant temporary relaxations of the legal penalties imposed on certain individuals; in 1587 John Rutherford of Hunthill was assured that letters of horning and caption raised against him were temporarily suspended while he attended a meeting of the Privy Council, and in 1599 hornings against a number of barons of the West march were suspended for 20 days for the same reason (i). Equally one could hardly expect the freedom-loving borderers to surrender themselves of their own volition as pledges; and although in 1573, twenty-eight men from the Middle march appear to be entering themselves voluntarily, this was an exception to the general rule (ii). Accordingly, in an attempt to compel attendance, even 'requests' to give advice were reinforced with penalties of treason, horning, rebellion and escheat (iii). Notwithstanding these measures - temporary safeconducts to the meeting place, and the threat of penalties for non-appearance - a large number of those summoned to co-operate with the Council in the administration of the borders failed to attend (iv).

It was difficult if not impossible for the Scottish government

(i) R.P.C.S., iv, p.183; ib., v, p.533.

(ii) ib., ii, pp.179-80.

(iii) ib., i, p.570.

(iv) R.P.C.S., i, p.566; ib., iii, p.528; ib., iv, pp.407-8; ib., v, p.300; ib., vi, p.136.

to control the turbulent border country through the central administrative machinery alone. In fact there had grown up a tradition of disregard for the often inefficient central power, and a marked refusal to co-operate with it. Yet the basic idea of establishing direct contact with and seeking the co-operation - given voluntarily or under coercion - of the more responsible inhabitants, was a sound one; the fault lay in expecting the borderers to come to the government to offer their services in controlling their own clansmen and tenants on behalf of the Crown, or to submit themselves to the partial discomforts of semi-incarceration, perhaps at their own expense, as pledges for their kinsmen. The central government, to put into effect the principles contained in the document presented to Mary of Lorraine, would rather have to seek out these borderers, show them the power of the Crown and attempt to persuade them by direct action that co-operation with the government was in their own interests.

3. The Council in the Borders - Military and Judicial Expeditions.

It is obvious from this that it was essential for effective border control that officials of the central judicial bodies should be regularly in the frontier region to hold courts for the administration of justice, to obtain local co-operation by signatures to the General Band, and to enforce the submission of pledges. Machinery already existed for this in the justice ayre. Originating in the 12th century to solve medieval problems of the administration of justice by the central government in the localities, the justice ayre remained of importance in Scotland almost in its original form until the formation of the Court of Session in the 1530's deprived the justiciars of their civil jurisdiction, and the institution of the High Court of Justiciary in 1672 created new methods for dealing with criminal causes (1).

(1) Mackinnon, p.261.

Justice ayres were held in the border region frequently, though not at regular intervals, throughout the 16th century (1). Justice courts were set up, generally at the border royal burghs of Jedburgh and Dumfries, at which local offenders were tried for their crimes.

The character of these ayres can most easily be shown by analysing the crimes which the King with his Justiciars was to enquire into at Jedburgh in November 1510 (11). They were first of all to deal with the four pleas of the Crown - treason, murder, arson and rape; treason included not only the crime of making illegal bands and obligations to private individuals but also, for frontier purposes, the crimes of breaking the truce with England, and of illegal trafficking with the English, particularly by becoming assured to, or giving allegiance to, the English monarch. Theft, and the reset of stolen goods and thieves, formed an important section of their inquiry, and to these were added felonious oppression of the King's lieges and the reset of the king's rebels. Economic control came also within the scope of the justiciars' duties; they were to regulate prices in the area, particularly those of shoemakers, tanners and bakers, they were to examine weights and measures to see that they were true, and they were to hear accusations concerning the passing of false money, making false gold alloys and illegal minting of coins. To these were added many miscellaneous inquiries, concerning witchcraft, adultery and swindling, and also the destruction of private baronial property such as doocots and orchards.

The crimes with which we are here mainly concerned are those involving communication with the English, and those concerning theft and

(1) See Appendix 7 for a list of judicial expeditions.

(11) Piteairn, 1, pp.64-7.

disorder within Scotland. Examples of these being examined by the justiciars on their ayre are easy to come by. For example in 1493 Walter Talyour of Hassendean was accused before the justiciar at Jedburgh of illegal communication with the English, and was permitted to compound for his crime; at the same ayre Simon Young in Rouchlee and William Grimshaw in Hassendean were accused of bringing English thieves from Tynedale across the frontier to raid in Scotland, and again both were allowed to compound with the Treasurer (i). Cases of slaughter, theft and arson were frequently heard in the border ayres; at Selkirk in 1495 James Turnbull was accused of sheep-stealing, and Andrew Turnbull of arson, while at Dumfries in 1504 Robert Grierson was accused of being concerned in the murder of one John McBrair, a chaplain, and Gilbert Thomson was tried for stealing merchandise after the town had been set on fire (ii). Only Thomson was hanged for his crime, all the others producing remissions in which they guaranteed they would pay damages to satisfy the injured parties. Assisting and resetting thieves were also crimes tried by the justices in ayre, both crimes being punishable by hanging (iii). It is therefore obvious that judicially the justice ayre was capable of dealing with most aspects of border disorder.

The justice ayre was not, however, the only type of expedition on the borders undertaken by officials of the central government. Sometimes it was necessary to deal with full scale political revolts which had their origins in the frontier region and created considerable disorder there. Examples of these were the rebellion on the East march during the years 1516-22 following the execution by the Regent Albany of Alexander Lord Hume, the revolt on

(i) Pitcairn, i, pp.16-18.

(ii) ib., i, p.89.

(iii) ib., i, pp. 40-1.

the West march by John Lord Maxwell and his adherents from 1585 to 1588, and the border activities of Francis Stewart, Earl of Bothwell, in 1591 and 1592. The central power hoped to crush these revolts by military expeditions to the borders.

The nature of these expeditions can best be shown by a description of the raids of 1518 against the adherents of the Hume faction on the East march. After the execution of Alexander Lord Hume in 1516, the march was subject to severe disorders which culminated in the assassination on 17 September 1517 of Antony de la Bastie, who had replaced Hume as Warden on that march. On 20 November, James Earl of Arran, the new warden and lieutenant, was ordered "to put the act of Parliament maid upon thame that committit crimes ... till dew executioun in all punctis" on the march (i), but it was not until February of the following year that more definite arrangements were made for Arran to "depart to the bordouris for the expelling of the tratouris and taking of thar housis" (ii). Proclamation was made that "all frehalderis, vassalis, subvassalis and utheris alswele of regaliteis as realteis togidder with uthir substantious gentilmen on this side the Month of the schiris of Angus, Fiff, Kinros, Clakmanan, Stratherne and Menteth sall cum with thair honorable houshaldis, fensable persouns weile bodyn", ~~shall~~ meet in Edinburgh on 19 March, and pass to Lauder the following day to meet the lieges of "Berwik, Roxburgh, Peblis, Annanderdale, Drumfreis, Kirkcudbright, Wigtoun, Carik, Kyle, Cunynghame, scherefdom of Air, Renfrew, Dunbertane, Lenark, Strivelingschir, Linlithqwschir, Edinburgh and Hadingtoun". The penalty

(i) A.D.C., p.107.

(ii) ib., p.111.

for failure to attend was the loss of life, lands and goods. The merchants of the burghs, whose personal attendance was not required, were to furnish a brigade of 50 culverineers, with their weapons, to support this host (i). To encourage those involved in lawsuits to attend, it was declared that no litigation could proceed during the absence of one of the parties at the raid (ii). In addition to this unpaid feudal host, who provided their own arms, the Treasurer was to pay the expenses of the 500 professional soldiers required to man the artillery necessary to reduce the border strongholds (iii). Lest these military preparations should alarm the English frontier officials, letters were sent to England, at least one being delivered by Marchmont Herald, to explain the proceedings against the traitorous Humes, and to request that no assistance be given to the rebels (iv).

The military organisation prepared, the next stage was to distinguish between rebels and others among the inhabitants of the march. This was done by issuing remissions and "respectis" (respites). All those wishing to indicate their good will towards the government were to request respites, having previously given pledges for their good behaviour. This was proclaimed on 25 February, almost a month before the date of the expedition, possibly to give the inhabitants of the march time to decide exactly which course of action they intended to follow; for although originally the date fixed for obtaining the respites was 7 March, this date was ignored and they were issued later than this. Those who did not seek respites or deliver

(i) A.D.C., pp.116-17.

(ii) ib., p.116.

(iii) ib., p.111.

(iv) ib., pp.112-3; T.A., v, pp.154, 156.

pledges were to be regarded as involved in the murder of the warden, and would face military invasion (i). The respites remained effective until midsummer, and the pledges were to be freed when the expedition had ended and Arran had returned to Edinburgh (ii). To encourage those who feared that by seeking a respite they would lay themselves open to apprehension for some crime other than the murder of Labastie, a general remission to all inhabitants of the Merse for all crimes except this was proclaimed; once more, those who failed to take advantage of the offer were to be regarded as involved in the treason (iii). Arran was given temporary power to grant such remissions even after the expedition had begun, presumably in case he found it expedient to deal benevolently with late comers (iv).

As the date of the expedition drew closer, the sheriffs and other officials of the areas from which the military force was drawn, were commanded to make proclamations reminding the lieges of their obligations; the local inhabitants of the Merse were charged to have food ready for the army; and local barons and freeholders were given special instructions for joining the main host when it met at Lauder at the end of March (v). How many of the lieges actually attended it is now impossible to discover, and only the professional forces have left any record of their presence - six gunners under the orders of master-gunner Borthwick, 509 foot soldiers commanded by Sir John Hamilton, and 102 additional foot under Captain Glen (vi). The course of the expedition is also obscure. There appear to have been two parts to the raid, one lasting nine days, the other seven; these possibly refer to sieges

(i) A.D.G., p.114.
(iii) ib., p.118.
(v) ib., p.118.

(ii) ib., pp.114, 120.
(iv) ib., p.119.
(vi) T.A., v, pp.154-5.

of certain castles, probably Hume and Wedderburn (i). There was considerable difficulty in obtaining oxen for hauling the guns, and those carters who did attend were well rewarded for their pains, even to the extent of being recompensed for an injured horse. A party was held at Lauder before the military operations began, and large quantities of ale were drunk while French taborers and minstrels played (ii). There is no detailed narrative description of the expedition; Bishop Leslie merely records that "Arran with a gret armie and Cannounis nocht few to seage and ding down quhair mister war, passis to the bordours, through quhais force and authoritie the traytouris despairing of thair lyfes, cum in the Erlis will, craue grace and mercie with all humilitie, sendes him the keyes of Hume Langtoun and Weddirburne" (iii).

At least four of the main strongholds were captured. Cannon and scaling ladders were used against Edrington and Wedderburn castles, apparently with success for both houses were later put in charge of keepers; Hume castle was taken and garrisoned with 24 loyal soldiers under James Hamilton of Fynart, while Blackadder was put in the custody of Patrick Blackadder, archdeacon of Glasgow (iv). But there is no evidence that the rebels did in fact submit, and the Merse was by no means brought completely under control. That this was unlikely was probably realised at an early stage, for at one point in the Council records the phrase "quhen he [Arran] has pecifyit the said cuntre of the Mers" has been erased and "after that he has gottin the housis of the Mers" substituted for it (v). From the very beginning Arran was dissatisfied with the forces and power placed at his disposal, and particularly with the lack of treasury co-operation in furnishing money for

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- (i) T.A., v, p.154. (ii) ib., v, pp. 154-7.
(iii) Leslie, ii, p.171.
(iv) Ex.R., xiv, pp.351-2, 359, 430; T.A., v, p.163.
(v) A.D.C., p.120.

supplies; by June he was forced to declare that he had done his best in face of this lack of co-operation, and declared the operation ended (i). Although certain strongholds were in government hands, the rebels had not been forced to submit; at least one further major expedition was necessary in the following year, and Arran was an active lieutenant of the Merse for a further three years.

The main characteristics of this expedition are also to be found in later military raids. The ordinary people of the South and Midlands of Scotland were intended to form the major portion of the military forces employed; proclamations summoning the lieges against Maxwell, Herries and Bothwell were made in 1585, 1588 and 1591, that of 1588 calling for border service from those who lived as far away as Aberdeen, Elgin and Inverness (ii). But, as in 1518, these musters did not represent the entire forces used; in 1585 the estates granted a special taxation of £20,000 to levy a body of mercenaries to support the muster against Maxwell, and although there is no direct evidence that professional soldiers were used on this occasion, it is probable that they were regularly present (iii).

The issue of respites was a fundamental feature of these expeditions for the reason already given. In fact the acceptance of respites by the rebels and willingness on their part to submit to the Crown, could cause the postponement, if not the cancellation, of a raid. The muster summoned to meet at Sanguhar on 1 March 1588 to subdue William Lord Herries was postponed for six weeks owing to his submission (iv); when the raid did eventually take place in June the circumstances had changed entirely, Maxwell having

(i) A.D.C., pp.117, 121.

(ii) R.P.C.S., iii, p.735; ib., iv, pp.247-8, 292, 643-4.

(iii) ib., iii, pp.741-2.

(iv) ib., iv, pp.244, 247-8, 257-8.

returned from Spain. In the same way an expedition against Bothwell in August 1591 was declared to be unnecessary because the chief persons "suspect culpabill in the lait disorderit contempt" had either "voluntarilie offerit thameselffis in his Hienes ward" or fled (1); and the expedition was completely abandoned.

The necessity of maintaining diplomatic contact with the English officials during the course of such expeditions is obvious. The English warden, or even the Privy Council, might see in the raising of military forces for frontier service a threat to their own territory; therefore their fears had to be allayed by indication of the exact scope of the military intentions of the government, and by regular communications concerning the progress of the raid once it had started. To this should be added the wish of the Scottish government to acquire some measure of assistance from England, particularly in preventing the reception of fleeing rebels on English soil; sometimes help in a more material form was asked for and received, for example, the cannon sent from Carlisle in June 1588 to assist in the taking of Lochmaben castle (11).

The final characteristic common to all these military expeditions was the concentration of the attack on the castles of the region. In 1588, in addition to the attack on Lochmaben already mentioned, Langholm, Threave and Caerlaverock were forced to submit, and many others were burned (111). Again in 1592 instructions were given during the course of the raid for the destruction of certain castles belonging to the supporters of Bothwell (1v). Castles formed the natural focal points of these expeditions; the reasons for these raids were primarily political, and the castles were the centres of

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- (1) R.P.C.S., iv, p.668.
(11) Moysie, pp.68-9; C.Scot.P., ix, p.573.
(111) R.P.C.S., iv, pp.286, 292; Moysie, p.69.
(1v) R.P.C.S., iv, p.709.

political power in the area. Thus, by taking and either garrisoning or destroying these castles, the government could gain political control for a time at least. But this did not mean that any rebellion would be crushed; the leaders of the revolt would be received into the houses of their kinsmen and friends, and although their rebellious activities would be lessened, they would not cease entirely. In consequence, these expeditions were not always completely successful.

The four main characteristics of these military and political expeditions were therefore the use of forces from a muster of the inhabitants of an extensive area along with professional soldiers; the use of remissions or respites to distinguish between the less well disposed inhabitants and the others; the care with which the government kept English officials informed of all stages of their activities; and the emphasis on the destruction of the homes of the rebels. The second expedition of 1588, however, shows another important feature not common to the other military raids described; the king held justice courts at Dumfries in the midst of the military operations, partly to deal with the political offenders, but mainly to try ordinary criminals (1). In this instance features of the justice ayre were added to those of a military enterprise.

This provides the clue to the true character of the majority of the expeditions undertaken during the 16th century by the central government against the borders. They were neither simple justice ayres, nor military raids against political rebels; they were a combination of the two, justice ayres with military support to subdue rebels in the sense of thieves and

(1) *Moysie*, pp.68-9; *R.P.O.S.*, iv, pp.286-92.

outlaws and other offenders against the law, and bring them into court before the justices. These expeditions, combining judicial and military features, formed the main effort of the Crown in keeping the frontier region under control. They provided justice courts at which offenders might receive trial and where bands and the entry of pledges might be recorded adequately, and also they ensured the presence of military forces to enforce the attendance of malefactors at these courts.

That force was required necessitates little proof. It was obvious that no malefactor would voluntarily submit himself to justice, that no landlord or clan chief would readily force one of his dependants to submit, and that, while some of the more timid landowners might sign the General Band without much persuasion, no clan chief would send any of his men to be warded as pledges without considerable pressure. The compiler of the Diurnal of Occurents described how in August 1573, when Morton made an expedition to Jedburgh, "some thevis come in and gave in band for the rest, and some plegis was delyverit to the Regent for good ordour"; he then adds "but or [i.e. before] thai wald obey, thair cornis and houssis wer distroyit, with greit spoulyis of thair goods" (1). James VI, in a letter of November 1597 addressed to Henry Leigh, the English deputy warden, makes the matter very clear; some of the Scots malefactors have refused to enter voluntarily to his justice courts, and it has therefore been resolved to pass upon them "with fyre and sword ... to their exterminacion and wreike" (11). Opportunity was first given to the borderers to submit to justice in the ordinary way; only when this opportunity was not taken did the military force go into action.

(1) Diurnal, p.337.

(11) C.B.P., 11, 832.

These expeditions, the most important feature of central control of the frontier, must now be examined in greater detail. This examination falls roughly into three sections: the preliminaries, particularly the organisation of the military forces; the raid itself, in both its judicial and military aspects; and finally the results obtained by these expeditions.

(a) Military forces on judicial expeditions. The military force used for this administrative purpose was basically that used for the defence of the realm against the English, the shire levies. The gathering together of this feudal force when it was required for military and defensive purposes was the responsibility of the sheriff of each shire summoned, who also undertook the responsibility of ensuring that all were prepared for war and armed with the weapons laid down by statute by holding regular wappin-schaws (1). The host was summoned by proclamation on letters being directed to the sheriff, and traditionally served for a maximum period of 40 days, although the usual period of service during the 16th century appears to have been from between 15 and 30 days (11). The military force called for administrative service on the borders was summoned in exactly the same way; this, along with the period of service and the type of person summoned, shows the closeness of the parallel between the military and administrative service of the lieges.

The length of service for which the administrative host was summoned at no time exceeded the traditional feudal period of 40 days. This maximum service was in fact called for on only four known occasions between 1515 and 1602; in 1530 when James V undertook his massive border operation,

(1) Dickinson, Army, p.133n.

(11) ib., p.144n.

in 1577 when Morton proposed to hunt out fugitives on a large scale, in 1581 when an English invasion appeared to be threatened, and in 1586 when negotiations were taking place for an agreement with England (1). The last two instances can be disregarded; the former was a defensive military force in spite of the administrative character of the summons, while the latter was an exaggerated proclamation for propaganda purposes - the raid, when it eventually took place some months later, was on a much smaller scale. An analysis of the remaining proclamations during the same period shows that the host was summoned to serve for administrative purposes eight times for 30 days, fourteen times for 20 days, ten times for 15 days and once each for 10, 8 and 4 days. These varying periods of service were probably determined by the exigencies of each judicial raid. On the whole, although the length of service of fewer than half the raids is known, it seems that the Crown could extort from the lieges administrative service for more than 20 days only when it was extremely powerful, a conclusion which coincides remarkably with that to be drawn from figures for purely military service. At all times long periods of service were unpopular, and only on very special occasions were they called for (ii). Only once, in 1591, when James VI was engaged in hunting down his arch-enemy, Francis Stewart, Earl of Bothwell, was the host summoned in unorthodox terms; it was required to remain on the borders "during the tyme of the necessitie of their service" (iii). This vague phrase implied a continuous effort, possibly extending over a considerable period of time, and might have been regarded as unconstitutional;

(1) A.D.C., p.328; R.P.C.S., ii, p.619; ib., iii, p.356; ib., iv, p.85.

(ii) of. Dickenson, Army, p.144n. Some of the 30 day administrative summons may have been, with that of 1586, of propaganda value only.

(iii) R.P.C.S., iv, p.862.

no objection to the service appears to have been made at the time, and as it happened the raid was abandoned within ten days and no problem of this nature arose.

The force summoned for administrative service on the borders was territorial in character, being raised by sheriffdoms and other administrative districts; the lieges of groups of specified shires were summoned to meet on a prescribed date for this purpose. Examination of the regions from which service was called shows that they fall into fairly clearly defined groups, which the writer has labelled alphabetically for ease of reference. Group A consisted of the sheriffdoms of Edinburgh and Linlithgow, and the Constabulary of Haddington; group B, of the sheriffdoms of Berwick, Roxburgh, Selkirk and Peebles, that is, roughly the east and middle marches; group C, of the sheriffdoms of Dumfries and Wigton, and the stewartries of Annandale and Kirkcudbright, roughly the west march; group D, of the sheriffdom of Ayr and the bailliarries of Carriok, Kyle and Cunningham; group E, of the sheriffdoms of Stirling, Lanark, Renfrew and Dumbarton (1); group F, of the sheriffdoms of Fife, Forfar, Kinross and Clackmannan, sometimes including Perth and the stewartries of Strathearn and Menteith; group G, of the Sheriffdoms of Aberdeen, Banff, Elgin, Forres, Wairn, Inverness and Cromarty. Forces from group A formed the nucleus of the majority of the expeditions, and the people from this area were summoned on 24 known occasions; they were generally used in conjunction with the forces from group B, summoned on 21 occasions, for service on the East and Middle marches, but could be sent to the West march to operate with the lieges of group C,

(1) Stirling and Lanark were sometimes summoned with group A rather than with the other two shires of this group.

who were summoned on 15 occasions. Supporting service on the West march was, however, generally the lot of groups D and E, summoned 16 and 13 times respectively. The lieges of group F were summoned on 12 known occasions in support of group A, generally on expeditions to the East and Middle marches; forces from group G were called on only twice, in 1578 and 1588, and, as both these summons seem to have been made largely for propaganda reasons, it is doubtful if they did in fact perform any service.

This regional method of summoning the host for administrative purposes conforms with the method adopted for calling together forces for offensive and defensive military expeditions against the English. It has already been mentioned (1) that towards the middle of the century, the necessity of providing for continuous defence against the English invader caused the development of a more complex system; the country was divided into "quarters", each quarter sending its military quota to the front in rotation, thus in theory ensuring the presence there of a continuous body of armed men. For similar reasons the same system was adopted for border service on at least one occasion. In 1597, when James VI intended that the lawbreakers of the West march should be "haillie reduceit to his Heynes obedience, or ellis altogidder exterminat and rutit out thair of", he gave instructions "to divyde the haill realme, appointing thame to keip quarter raidis". The country was for this purpose divided into eight roughly equal areas, the lieges from each of which were expected to serve for a period of 30 days; each quota was to gather at Dumfries on the first day of each month, when the forces of the

(1) Chap. 3, section 1, pp.115-17.

previous quota were beginning to disband (i). In this way it was hoped to obtain an ample military force serving for administrative purposes on the West march continuously from November 1597 until June 1598. This system broke down very quickly. It is possible that few men called for service with the second quarter did attend at Dumfries on 1st December, while it is obvious that hardly any of the third quarter arrived on 1st January 1598; for on 15th January the order instituting the quarter system was rescinded, "the present season of the year [being] nawayes meit for travell" (ii). In place of service by the lieges a body of professional soldiers was to be raised which would be maintained by taxation; those who had been liable for service with the third quarter thus found themselves expected to pay a tax amounting to £2,500, at the rate of 16 shillings from each poundland. A few days later a similar tax was levied on those who had been summoned for the second quarter (iii), and this special taxation was applied to later quarters as they became liable for service (iv). The suggestion has already been made (v) that the original order might have been a ruse devised in order to provide justification for raising this special tax at a time of

(i) R.P.C.S., v, pp.417-18. The eight areas which were to provide the quarter musters were:-

1. Lanark, Renfrew, Dunbarton, Tarbet, Argyll and Selkirk;
2. Fife, Clackmannan, Kinross, Perth, Strathearn, Monteth;
3. Edinburgh, Haddington, Berwick, Roxburgh;
4. Linlithgow, Stirling, Forfar, Kincairdine;
5. Aberdeen, Banff, Elgin, Forres;
6. Mairn, Inverness, Gromarty;
7. Selkirk, Peebles, Lanark, Renfrew, Dunbarton;
8. Kyle, Carrick, Dunningham, Galloway, Mithsdale, Tarbet.

Note that this system involved a certain amount of duplication.

- (ii) ib., v, pp.434-5.
(iii) ib., v, p.437.
(iv) ib., v, pp.440, 448.
(v) see Chap. 4, section 1, p.198.

financial difficulty. While there are grounds for accepting this interpretation, it is more likely that the taxation was, as it appeared to be, devised as a measure to cover up the failure of the original operation; there were diplomatic reasons for James VI wishing to exert himself on the frontier at this time, and the quarter method was the cheapest and most simple method of providing a continuous force for administrative service there. The experiment was not, however, repeated.

The system of building up the administrative force being based on the shires, the responsibility of summoning and collecting the lieges belonged to the sheriffs, as already shown in the description above of a levy for purely military purposes (i). Instructions were sent in the first place to the sheriff of each shire, who caused the proclamation to be read at the market crosses of the more important places within the shire. It was then his task to see that men gathered when required, and to lead them to the rendezvous. The barons within each shire received at the same time as the sheriffs, individual notice of the expedition and their responsibility to be present; in 1552, for example, the messengers who delivered the proclamations to the sheriffs also carried "speciale writtingis ... to all baronis of thai sherefdomes" (ii). The nature of these special messages can be shown by those received on other occasions by Sir Patrick Vane of Barnbarroch in 1586, and the lairds of Wemyss in 1536 and 1592; full information was given, as in the proclamation, of the reason for the expedition, and the recipient was asked to be present in person at the specified meeting place "weill and substantiously accompaneit with your freindis tenmentis and servandis" (iii). By this

(i) see pp. 280-2.

(ii) T.A., x, p.119.

(iii) Maitland Miscellany, i, part ii, pp.278-6.

detailed form of summons the government assured, as far as possible, that all persons liable for service were aware of their obligations.

They were called for at irregular but fairly frequent intervals (i), and it even happened that lieges from an area were called on more than once in the same year - for example in 1578, 1582, 1586 and 1588. This did not necessarily mean that the lieges attended several times in any one year. In 1586, although proclamations were made in June, November and December affecting inhabitants of the same regions, no service was in fact given in that year; the June proclamation was vague, apparently of propaganda value, and no muster took place, while the November proclamation was countermanded by that of the following month which summoned forces for January of the following year, when the raid did at last take place (ii). For various reasons, therefore, it does not follow that because a raid was proclaimed, the service was in fact given. On the other hand the multiplication of proclamations could cause difficulties and inconveniences. In April 1588 the proclaiming of two expeditions, with subsequent alterations in the dates of musters, led to the anomaly that the lieges of the shires of Edinburgh, Haddington, Berwick, Roxburgh, Selkirk and Peebles were summoned for both raids, one meeting at Dryburgh and the other at Sanguhar within a few weeks of each other; in these circumstances, those who attended the former were "exemit and licenciat to remane at hame" from the other. This did not prevent them from being summoned again the following month, and there seems to have been little attempt made to ensure that the service was reasonably and equitably distributed (iii).

(i) see Appendix 7.

(ii) R.P.C.S., iv, pp.85, 114, 124; C.B.P., i, 472, 476.

(iii) R.P.C.S., iv, pp. 247, 257, 271, 285.

There remain to be considered the people who were called on to perform this service. In brief they consisted of those vaguely called 'the lieges' or 'fencible persons'; for example a proclamation of 1569 called for service from "all and sundry our Soverane Lordis liegis betuix lx and xvi yeris and utheris fansabill personis" (i). This phrase was obviously intended to cover all who were subject to service (ii), but its vagueness left many loopholes for those who sought to evade their obligations. Almost equally vague, and actually less comprehensive were "all the lardis" and "the landid men", used in 1526 and 1555 respectively (iii). Closer definition than this was required to ensure that all summoned recognised their liability; other proclamations provided this definition. In 1530 James V summoned "all baronis, gentilmen landit and all substantialis men unlandit", this last group being clarified later by a statement that "he is haldin and repute ane [unlanded] gentillman that hes ane hundreth pundis worth of gudis in his possessioun, stelebow and ferme of that yer alanerly exceptit, and is haldin toundirly the chargis contenit in the actis and proclamatiounis" (iv). In 1561 the definition was even greater; those summoned were "the Erlis, Lordis, Baronis, gentilmen, landit men and frehalderis ... with their substantialis houshold" (v). Again, in 1591, the "erllis, lordis, barenis, fewaris, frehalderis, landit gentilmen, and substantialis yemen and inhabitantis of burrowis, betuix sextie and xvi yeiris" were called for (vi).

(i) R.P.O.S., 11, p.19.

(ii) see below for details of those liable for service, pp.296-7.

(iii) A.D.C., p.244; R.P.O.S., xiv, p.13.

(iv) A.D.C., pp.328, 396.

(v) R.P.O.S., 1, pp.163-4.

(vi) ib., iv, p.644.

The necessity for defining so closely those who were bound to attend is obvious when it is realised that the service was unpopular and that many endeavoured to escape it. In February 1597 when through some apparent oversight the summons mentioned only the class 'barons', the other landed gentlemen, feuars and freeholders of the region, immediately declared their intention of remaining from the raid, and another proclamation had to be made pointing out that these men were "for the maist parte of bettir rank, substance, moyane and calling nor sindrie of the saidis baronis" and insisting on their attendance (1). To avoid another possible loophole, the phrase "alaweill within regalitie as ryaltie" was sometimes added. Proclamations using these closely defined terms were obviously seeking the widest possible basis for call-up, and it is a fact of some significance that the use of the most detailed and comprehensive formulae was greatest when the central power was at its greatest strength, and most able to enforce its proclamations; weak and vague phraseology was generally used only during periods of unstable government.

These defined proclamations indicate that the unpaid feudal forces used consisted primarily of members of the upper social groups. Earls, lords and most barons held land from the king, and their duty of service on these occasions derived from their feudal obligations as military tenants; the liability for service of those of lower rank was based on statute. An act of 1422 decreed that men worth £20 of rent or £100 of moveable goods were for military purposes to be horsed and armed as gentlemen, and thus they assumed

(1) R.F.C.S., v, pp.366, 373.

the obligations of gentlemen; the obligations of yeomen and others lower in the social scale were also defined (i). For administrative duties on the borders it was the higher ranks which were preferred, although yeomen were sometimes required. In 1587 it was stated that the "commons and fermoris of the ground" were not required for a master at Peebles, only "substantious gentlemen", while the following year yeomen and labourers were specifically exempted in the proclamation (ii). Too much use of this class of the population would rapidly disrupt the economy of the country, a fact recognised by the government, for example in November 1585, when they were exempted "in respect the cornis ar in many places unled" (iii). When their services were required, they were used largely to bring up supplies by wagon.

Those summoned for administrative duties on the border were required to be armed - "weill bodin in fere of weir". This probably implied that they were to bring with them the equipment they were bound by law to display at wapineshaws. It is not necessary to describe this equipment fully here (iv). It is sufficient to state that in the early part of the century it included for defensive purposes full plate armour for the higher ranks, with jacks, halberets, gorgets and gloves for the lower; offensive weapons included swords, spears, pikes, axes, halberds, bows, culverins and hagbuts, although it should be recollected that at this time firearms and artillery were the province of the professional soldier. Towards the end of the century the defensive armour was reduced to a helmet and corselet, while pikes and muskets were, apart from swords, the main offensive weapons (v).

(i) A.P.S., ii, p.18.

(ii) R.F.C.S., iv, pp.225, 285-6.

(iii) Maitland Misc., i, pt.ii, p.275.

(iv) see Dickinson, Army, p.136.

(v) R.F.C.S., v, p.446.

The calling together of this vast armed administrative host was bound to cause considerable inconvenience to those summoned; at the same time, it is clear that many of those summoned could not attend for illness or other reasons. It was therefore possible for arrangements to be made to suit the convenience of those attending, or even for individuals and groups to obtain exemption from attending.

The absence of numbers of gentlemen from their normal pursuits affected most heavily the conduct of their legal affairs - they could not "baird wait upon the session and be at the said raid". By carrying out his duty of attending the King at a judicial raid a man involved in litigation might lose his case for failure to appear personally when called before a court. In 1518, therefore, intimation was made by the Lords of Session that no legal case in which one of the parties was absent by reason of attendance at the raid would be heard while the raid was in progress, although all other cases would proceed normally (1). This was a privilege of some importance to many of those summoned for border service, and no doubt encouraged their attendance on these occasions. In 1573 this was taken further, and the Justice, Justice Clerk and their deputies were ordered to stop all proceedings in any justice courts during the period of the expedition; all cases were to be continued for three months or else deserted (11). In fact, on many occasions throughout the century, the Justice, the Justice Clerk and other legal officials were required to attend judicial raids in person, and this obviously must have disturbed the normal functioning of litigation.

(1) A.D.C., p.116. This occasion refers to a purely military raid (see above, p.281), but the principle appears to have been general.

(11) R.P.C.S., 11, p.246.

The result of all this was that by 1585 it was apparently assumed that proclamation of an expedition against the border thieves automatically implied the stay of all suits before the Lords of Session. The number of these raids, which was gradually beginning to increase at this time, thus permanently disrupted and delayed the course of justice in the central courts. Accordingly it was proclaimed that all cases were to proceed normally in future in view of the fact that the "Lords of Counsell and utheris memberis of the College [of Justice] are nocht subject to pass to the said raid, and that all parteis may persew and defend their caussis be information to be send to their advocattis" (i). Provided that attendance of the judges themselves was not required on the borders - and seldom were all the Senators called for at the same time - litigation could be carried out in the normal manner as, owing partially to changes in legal techniques but mainly to the increasing number of professional advocates, it was no longer so essential for a litigant to appear in person (ii). The privilege expressed in the decree of 1518 was no longer necessary.

Exemption from service could be granted, on grounds of administrative necessity, to an official whose business was elsewhere, and to a private individual on grounds of personal hardship; it generally covered only the individual to whom it was granted, but sometimes included others, kinsmen and friends. During the childhood of James VI, John, Earl of Mar, was granted a licence to "remain" from all such hosts, with his men, dependants and friends, as long as he remained at Stirling in attendance upon the royal

(i) R.P.C.S., iii, p.738.
(ii) Hamay, pp.140-1.

person (i); again, in 1885, an official exemption from attendance at a raid on the West march was granted to Thomas Ker of Fernihurst, who, as warden on the Middle march, was expected to remain to carry out his duties there, along with the "sindry utheris gentlemen quhais assistance and concurrence he mon use in serving thairin" (ii).

Personal exemptions seem to have been granted for various reasons. For example in 1597 Thomas Lord Boyd successfully maintained that, as he himself no longer held any land from the king, having demitted it all to his heirs, he should in future be exempted from attendance at raids (iii). The most common reason, however, was the age or illness of the person summoned. In 1557 John Wemyss received a licence to remain from a raid because he was old and troubled with "caterbis" [catarrh] and the "grawell". His father David Wemyss received a similar licence in 1529, and although no illness was in fact mentioned, it is possible that he was suffering from some severe ailment as the following year he made a pilgrimage to the shrine of St John of Amiens, perhaps in thanksgiving (iv). Another example of this type of licence was that granted to Harry Stewart of Rosyth, George Hasket of Pitfirrane and Andrew Rowan of Kinoudder in 1587 (v). The characteristics of this type of exemption were that only the named person or persons were excused, who at the same time had to ensure that a close relative, generally a brother or an eldest son, undertook the military service in their stead (vi). Another type of licence covered the recipient along with his servants and tenants, and named no specific reason for the exemption: John Melville of Raith and John Barclay

(i) H.M.S.G.R., Mar and Kellie, ii, pp.32-3.

(ii) Newbattle Mss., x, no.44. (iii) R.P.C.S., v, pp.418-19.

(iv) Fraser, Wemyss, iii, pp.1-2, 10-11. Pilgrimages to this shrine were frequently made from Scotland about this time (R.S.S., i, 103, 1251, 1267, 1425, 1523, etc.)

(v) N.L.S., Ch.6833 (Pitfirrane Write, no.833).

(vi) of. Pitcairn, i, p.423.

of Touch received exemptions of this nature in 1577, as did William, 10th Earl of Angus, in 1597 and 1602 (i). It is probable that there was no valid reason for the granting of these exemptions except the payment of a monetary composition to the Crown.

The grant of these exemptions was a matter for the King himself, or the Regent, being issued under the personal signet seal or the sign manual of the King or Regent concerned. They were specific; the main person exempted was named, the expedition from which he was exempted was specified, and freedom from any legal consequences he would otherwise have incurred was asserted. With the exception of a few such as that granted to John Maxwell of Pollock in 1668, which was for life (ii), each exemption was effective for only a very limited period. Nevertheless, it was sometimes found necessary when proclaiming a raid to declare that all previous licences were annulled (iii). It is probable that towards the end of the century, when the number of raids was on the increase, the obtaining of exemptions was subject to abuse; in 1592 mention was made of those who remained at home under pretence of having obtained dispensation, while in 1686 it was decreed that exemptions were available only for the aged and diseased (iv).

The issue of these licences makes it difficult to evaluate the success of the call-up for any of these raids, as it is impossible to know either how many of those summoned were exempted, or how many actually attended. It is certain that some landowners did attend, sometimes from as far inland as Fife, for a document of 1534 describes the lairds of Raith, Wemyss and Balgony "cumand hayme fra the kingis service and raid upoun the thevis" (v). On the

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- (i) Fraser, Melvilles, ii, p.9; Fraser, Douglas, iii, p.318; ib., iv, p.42.
(ii) Fraser, Maxwell of Pollock, ii, pp.3-4.
(iii) R.P.O.S., iv, p.247-8.
(iv) ib., iv, p.286; ib., v, p.13.
(v) Fraser, Melvilles, iii, p.71.

other hand, the impression is one of general laxity in attendance; for example, in 1597, James VI was forced to complain that of those summoned "verie few hes yit conuenit, bot still remanis and abydis at hame" (i). This impression coincides with that given by the attendances at purely military musters; lieges who were apparently reluctant to obey a summons to defend their native land were unlikely to respond more eagerly to risk their lives for purely administrative purposes (ii). Just as it was found necessary in time of war to hold Justice Courts to punish those who had been absent from military service, so was it necessary in time of peace to punish those who failed to attend the border administrative expeditions.

The proclaimed penalty for failure to attend was loss of life, lands and goods; in practice this meant either amercement, or the escheat of the goods of the offender. The task of proceeding against absentees was the duty of the Justice and the Justice Clerk, and it seems often to have been done immediately, sometimes while the raid was still in progress (iii). The escheats of certain persons who had absented themselves from James V's great raid of July 1550 were being granted to other individuals within a month of the raid itself, while in March and July 1551, escheats were granted during the progress of the raids, within two weeks of the dates on which the absentees had been summoned to attend (iv). The implication is that legal proceedings had taken place within this very short period. But these very rapid actions seem to have been taken against local men; against those who were to have come from a distance more leisurely and formal action appears to have been taken. An assise was summoned at Edinburgh on 30th April 1562 to

(i) R.P.C.S., v, p.421.
(iii) R.P.C.S., iv, p.248.

(ii) of. Dickinson, Army, p.144.
(iv) R.S.S., 11, 707, 714; ib., iv, 1146, 1305, 1309.

hear the case against absentees from the Lothians, Linlithgow, Peebles, Stirling and Fife who had failed to attend at Jedburgh the previous November. At this court the offenders appeared to state their excuses or to produce their licences to remain from the raid; on this occasion the assise acquitted at least twelve men, while others were amerced, some very heavily (i). Excuses accepted as valid at these courts included age and infirmity, that is, the same grounds on which the majority of licences of exemption were issued (ii); and it was in fact possible for some of the accused to clear themselves by producing the exemptions which they had been at such pains to acquire before the raid. In addition, many offenders attempted to claim, sometimes successfully, that they had not been liable to summons as they themselves did not possess any lands (iii).

The grant of the escheat of an absentee to a private individual meant the loss of some revenue to the royal Exchequer, and on the whole such grants were not made on a lavish scale. They appear to have been made to men who actually had attended the raid in question, some possibly being in the form of a reward for a particular service rendered. Many others were purchased as an investment, in hope of profit, for the purchaser could pursue the absentee in a court of law, generally for a monetary composition of the escheated goods. It seems to have been to the advantage of the purchaser to take this legal business to a private court, his own or that of his lord, perhaps because there the composition granted would be larger; this abuse, which could force an absentee to attend a court at a considerable

(i) T.A., xi, p.161; Pitcairn, i, pp.421-3.
(ii) see above, p.300.
(iii) Pitcairn, i(2), p.156.

distance from his home, had become so great by 1550 that a statute was made insisting that such cases be heard only at the justice ayres of the shires within which the offender dwelt (i). This ensured that the case was heard by the royal justices, who controlled the amount of profit the purchaser of the escheat could make. That the Crown did occasionally seek to control such profits is shown by the fact that when the escheat of John Douglas of Wallaston was sold to John Campbell of Castle Garriek in 1551 for £20, a clause was inserted in the grant that he "tak na mair for this eschete fra the party bot xl li" (ii).

On the other hand, amercements were a source of profit to the Crown; they were assigned in a royal court by a group of commissioners, and the sums involved seem to have been graded roughly according to the rank of the offender. In 1555, in a court held at Glasgow, the assessors, Alexander Earl of Glencairn, James Lord Somerville, Richard Maitland of Lethington, and John Hay, rector of Monymusk, amerced some sixty absentees from Renfrew and Lanarkshire in sums ranging from £40 to 10 merks; John Mure of Caldwell, a baron, paid £40, lesser landed gentlemen paid £20 or £10, while men apparently of tenant status paid 20 or 10 merks (iii). The threat of amercement does not seem to have been a powerful one, as some people made a habit of staying away from these expeditions; Alexander Gillies of Glenkirk, for example, found himself in the Queen's will for this offence on at least two occasions, in 1555 and in 1562 (iv). Such amercements, however, were important to the government in helping to cover the expenses

(i) A.D.C., p.339.

(ii) R.S.S., iv, 1305; cf. ib., iv, 942, where the Treasurer was given control over the gift of an escheat.

(iii) T.A., x, pp.259-61.

(iv) Pitcairn, i, p.384; T.A., xi, p.149.

of the raid. In fact it is possible that to a certain extent money was a greater necessity to the Crown than personal service; this is suggested by the part played by the towns in these expeditions.

The burgesses of the towns were liable, along with the landed men of the countryside, for military service with these border expeditions, and were summoned by the general proclamations. Although these men were required by the Act of 1429 to possess armour and weapons (i), it was clearly undesirable that all burgesses should attend military expeditions at frequent intervals; apart from the unwarlike nature of the majority of town-dwellers, which made their value as a fighting force doubtful, their removal from their ordinary places of business would have meant economic disaster for the nation. In 1587 it was possible for the burgesses of Edinburgh to claim that they were all privileged to stay from any raid proclaimed; they did not attend in person "bot send men att the Kingis desyre, and were stentit to that effect" (ii). And this privilege also applied to other burghs; for example in 1599 the burghs of the West march each sent a nominal number of "hagbutter" to the raid at Dumfries - Wigton sent 14, Whithorn 6, and Kirkcudbright 20, while Dumfries itself, the largest, provided 40, with 24 pioneers and masons in addition (iii). The privilege did not, however, operate automatically. Examination of burgh records shows that for each raid the towns had to negotiate separately (iv). Offers were made, rejected, and compromises reached; in 1582 the Provost of Edinburgh, having been asked for 160 soldiers for service at a raid based on Peebles,

(i) A.P.S., ii, p.18.

(ii) Pitcairn, i(2), p.156.

(iii) R.P.C.S., vi, p.27.

(iv) e.g. Edinburgh Records, iv, pp.60, 91-4, 412, 439, 520; Glasgow Records, pp.459, 468; Ayr Accounts, pp.119, 147, 149, 159, 163, 165.

attempted to negotiate for a reduction of the number to 100, while in 1587 the burgesses offered unsuccessfully to outfit a ship to take the royal ambassadors to Denmark in place of supplying 100 men for another raid (i).

There was no fixed service for each town to perform, and even the form of the service was reassessed each time according to the necessities of the particular raid. When Charles Campbell set out from Ayr in 1578 to discuss the border raid with the Council at Stirling, he intended to explore "gif the town could be dischargit thair of, or uthirwyiss quhiddir gif men or money wald serve" (ii). There were precedents for a complete discharge - Ayr had received one in 1553 - but these cost money which involved increased local taxation (iii). In 1577 the burgesses of Edinburgh similarly received a licence to remain at home from a frontier raid; this cost them £1000 and a special tax was levied to produce this money for the Crown (iv). The other alternatives also implied increased taxation; if no discharge was received, the burgh either had to provide a quota of men raised by itself, or provide money to pay for men raised elsewhere. For a small raid it was sufficient for each town to raise its own quota, as had already been indicated in the example quoted for 1599; but it was more economical to raise men for large scale expeditions centrally and for these the towns provided money, not men. The principle of the latter proceeding was laid down as early as 1518, when all the burghs "on this syde the Month" were required to provide 50 culveriners with their weapons; as all the towns could not easily convene for this purpose, recruiting of these men was organised and paid for by the burgh of Edinburgh, which was to be recompensed proportionately by the other

(i) Edinburgh Records, iv, pp.260, 503-4.

(ii) Ayr Accounts, p.143.

(iii) *ib.*, p.119. Irvine appears to have paid £200 for a total discharge at this time.

(iv) Edinburgh Records, iv, p.60.

towns liable (i). At the end of the century, in 1392, the same organisation was operating; the Edinburgh burgesses were forced to write to the burghs of Kelso, North Berwick, Linlithgow and Stirling to claim the payment of various sums as their share towards the provision of men for a border raid the previous year (ii). It is possible that, when Edinburgh supplied large sums of money for a license of exemption, or provided a large number of soldiers for the host, the city was acting on behalf of many other burghs.

This provision by the towns either of money or of troops implied the presence on these judicial expeditions of professional soldiers additional to those summoned in the feudal levy. On the whole this professional element has left little trace. French troops were based at Jedburgh and Hawick in February and March 1551; other mercenaries under Captain John Stewart attended justice courts in the same places in November 1561, while twice in 1569 Harry Balfour took charge of a party of artillerymen during raids to Liddesdale (iii). The fact that these leaders were Scots implies that the mercenaries themselves were also of Scottish nationality; this is not surprising when one considers how important the export of Scottish soldiers to the continent was, not only in this and earlier centuries, but also in the following century. These professional troops were specialists - gunners, hagbutters and culveriners - and thus formed a nucleus round which the entire force could be built. They were temporary forces, raised in the same way as those forces raised to assist the wardens (iv), and they were paid either by the contributions of the burghs, or by the royal treasurer.

(i) A.D.C., pp.116-17. (ii) Edinburgh Records, v, pp.60, 62.
(iii) Lorraine Corr., p.344; T.A., ix, p.477; ib., xi, p.88;
T.A.Mss. (1567-9).
(iv) see Chap. 4, section 1, pp.193-7.

At no time was any attempt made to replace the feudal forces entirely by professional soldiers, largely because the expense would seriously have upset the Crown finances, and involved new and unpopular taxation. The suggestion was in fact made, probably about 1554, to the Queen Regent, Mary of Lorraine; it was considered possible that landowners "to be quyte of all sic raidis as thay have bene in use of to ryde on thevis will give the quene the twenty penny of their levings for ane certaine of yeiris", but no attempt appears to have been made to test this assertion (i).

The preliminary organisation of a judicial raid to the frontier region was thus primarily military in character. The feudal host from varying areas of Scotland was summoned for a stated period of time, supplemented by a small group of professional soldiers. The towns provided money, and the legal officials involved in the expedition prepared to forsake their normal tasks. In the locality of the raid, the towns were ordered to prepare food and drink for the army which was about to descend on them; for although each man present was expected to provide some of his own food, more than could be carried was necessary (ii).

(b) Judicial and military activities. When the force raised with such great care arrived at its destination it faced a difficult and dangerous task as the military arm of a judicial expedition designed to control independent men who had little regard for royal authority. Generally both military and judicial proceedings were under the control of the King himself; it was primarily the king's duty to maintain law and order in the

(i) This suggestion occurs in the course of advice given to the Queen Regent on Exchequer administration (N.L.S., Adv. Ms. 34.2.17, f.124v.)

(ii) R.P.C.S., ii, p.676; ib., iii, p.519; ib., iv, pp.287-8.

frontier region, and James IV, James V and James VI all commanded several such expeditions, while Mary, Queen of Scots was present on at least two. During minorities, or during the absence of the king, control of the raid was in the hands of a specially appointed Lieutenant of the Marches, who acted as viceroy with full regal powers (i). The King or Lieutenant was always attended by a group of councillors and legal officials. For example, in 1541, the judicial proceedings were in charge of Archibald, Earl of Argyll, hereditary justiciar, who was attended by Malcolm, Lord Fleming, James Kirkaldy of Grange, the Treasurer, David Wood, the Comptroller, Henry Balnaves, a Senator of the College of Justice, and Thomas Barnatyne, the Justice Clerk (ii); again, in 1593, James VI was accompanied by the Chancellor, John Maitland of Thirlestane, John Cockburn of Ormiston, the Justice Clerk, James Elphinstone, the Collector and Comptroller, Richard Cockburn of Clerkington, the Secretary, John Carmichael, Mark, Lord Newbattle, and many other Lords and Councillors (iii); In fact, during a border raid, the major portion of the central administration was transferred temporarily to the borders; accordingly much of the normal business of government, unconnected with the frontier, was carried on at the same time as the proceedings against border thieves and rebels (iv).

What it was intended to accomplish during the course of a raid can best be seen in the instructions given to various Lieutenants of the Marches and other officials. Three of these will be taken as the basis of the following examination: instructions to those holding a Justice Ayre

(i) for this official see Chap. 2, section 5.

(ii) Hamilton, i, p.74.

(iii) R.P.C.S., v, p.101.

(iv) see e.g. R.S.S., iv, 1114-58 where at Jedburgh between 18 February and 24 March 1551, many different types of business were authenticated by the Privy Seal.

at Dumfries in April 1540 (i); those given in November 1561 to James Stewart, later Earl of Moray, for holding a Justice Court at Jedburgh (ii); and those given to Archibald 8th Earl of Angus in November 1586 (iii). In as much as these differed in time and in the specific situations to be dealt with, they differed in detail; but there were basic common features which can give a general picture of this administrative device as it was intended to be operated.

The obligations of the landowners under the General Band were the foundation on which the entire operation depended; this is implicit in all three documents. All complaints of illegal actions were to be handed in to certain designated persons, and the landlords of those so accused were expected to apprehend them as they had bound themselves to do. In 1540 those "skaithed" were to make their complaints and apply for redress direct to the offender's lord, who, if he were a baron, had power to deal with the matter in his own court; only if the landlord refused to accept the responsibility of dealing with the offender, or if the complainer feared to make his complaint directly, or if the landlord had insufficient jurisdiction to deal with the matter himself, were the warden or the central officials to be drawn into the matter. Such reliance on the judicial powers of the landlord could easily be abused in spite of the penalties involved in breaking the General Band, and in 1561 the procedure differed considerably (iv); the complaints were made to the central officials who then issued to each landlord "valentines", lists of accused individuals for whom he had apparently accepted responsibility and whom he was now required to present to justice. If the landlord

(i) Fraser, Annandale, 1, pp.18-21. (ii) R.P.C.S., 1, pp.186-7.

(iii) Fraser, Douglas, iii, pp.286-90.

(iv) This should not be taken as implying an administrative advance between 1541 and 1561; both methods were used as the exigencies of the time demanded.

denied his responsibility for a certain malefactor, producing legal proof, it was the duty of the central officials to discover the true master of the offender against whom these proceedings could be taken. This method was also used in 1586; certain named landlords of Teviotdale were to present "sum of the principall lymmers duelland under thame to be punisht be iustice to the terroure and exemple of utheris". Although it is not so clearly brought out in these three documents, the clans who had previously given pledges to the government were required in the same way to hand over those of their number who had been accused of any crime; the list of those who were to hand over "lymmers" in 1586 included clan chiefs as well as landlords. Prior to such calls on the clans, the pledges themselves were recovered from those inland lairds who had been ordered to keep them (1), and it is probable that those pledges who were brought back into state custody were taken on the raid prepared to suffer the penalties should their fellow-clansmen not be submitted to justice.

The next stage in the proceedings was the trial of those offenders who had been arrested. As has been seen, this was done in 1540 by the lord of the offender in his own court. More generally, however, it was the responsibility of the judicial members of the council present on the raid. The important thing was to secure the actual conviction of a reasonable number of malefactors, partly to show an example to other lawbreakers, and partly to enhance the government's reputation for rapid and efficient justice. Accordingly proceedings were to be opened only in those cases in which the state was certain to procure a conviction. This was emphasised both in 1561

(1) R.F.C.S., iii, pp.306-7.

and 1586. Those apprehended by Moray were "with circumspect sycht of suithfast assyise and dittay [to] be presentit to the justice, and execute with all possible diligence"; this left little room for acquittal, especially as the assise was to consist of "men of the incountreis quha may have knowlege" of the case, in preference to a local jury, former experience having shown that through failure to observe this precaution "maist manifest and publick offenderis hes bene clengit [acquitted]". The composition of the assise was always of importance; the qualities sought for in the jurors at Dumfries in 1597 were neutrality and indifference to the cases being tried, complete lack of any suspicion of complicity, and a general inclination towards justice (1); these qualities could ordinarily be found only in men of the incountry. The instructions to Angus were even more explicit than those to Moray. He was to examine carefully the accusations against those who had been apprehended, taking into consideration those men who were available for jury service, and only if there was likelihood of fying the accused was he to undertake immediate judicial proceedings; if the assise was not suitable, or the dittay insufficient, he was to take heavy surety from the offender for his re-entry to justice at a later date. This point was again emphasised later in the instructions: Angus was to see that the assises consisted of men well aware of the crimes of the accused, and he was expressly forbidden to present any offender to an assise which might acquit him.

It is therefore obvious that the case was heavily weighted against any offender actually brought to trial; but these probably formed a minority of those presented to justice, as it would appear from the surviving records

(1) R.P.C.S., v, p.424.

that those giving surety considerably outnumbered those executed for their crimes (i). Those who did suffer the death penalty were in a sense merely unfortunate in being a warning to their fellows, while the others were fortunate in that, through their sureties, they were a possible source of revenue to the Crown. It is clear that the government could scarcely repay the loyalty of the local landowners who had presented their friends, tenants and kinsmen to justice by executing too many of them, especially when the lord was willing to stand surety.

Furthermore it was possible for a criminal to obtain a remission of his crimes, by admitting his implication therein and paying a monetary composition to the government, by promising to restore stolen goods or otherwise satisfying or redressing the complainers, and by promising to conform to the law for the future. The grant of remissions played an important part in the central administrative policy on the borders, especially when they were issued on a grand scale, as they frequently were (ii). In the first place they acted as a bribe to obtain the measure of peaceful administrative co-operation desired through the acquisition of signatures to the General Band and the entry of pledges; acceptance of a respite or remission was tantamount to that submission to governmental authority implied by the ties of these two administrative devices. Secondly, as has already been observed in connection with military expeditions against political rebels, refusal to accept the offered remission automatically outlawed an individual and made him liable to suffer

(1) The main surviving records consist of lists of those who had been entered by various landlords, and the amount of surety or caution offered, e.g. R.P.C.S., II, pp.34-5; ib., VI, pp.719-20.

(ii) e.g. in 1533 all clans, surnames and inhabitants of Liddesdale were included in one comprehensive respite (A.D.C., p.410). This was not an isolated example; cf. ib., p.381; R.P.C.S., III, p.557; R.S.S., I, 2073, 2155; ib., II, 753.

military invasion; in this way remissions helped to separate the more loyal from the rebellious borderers.

Remissions appear to have been used regularly throughout the century. In the 1540 instructions their use is taken for granted, and an open general pardon for all inhabitants who come before the justices to compound for their crimes forms the first and main heading to the document. In 1586, however, Angus was more circumscribed: he could grant remissions only to inhabitants of Teviotdale, and before doing so he had to have the approval of those members of the Privy Council associated with him; certain cases, particularly those involving slaughter, were not to be remitted at all, and all those who did receive a remission had to find responsible surety to satisfy their accusers according to the value of the goods stolen. In principle the Crown was unwilling to countenance favour or leniency of any kind towards the border thieves; James VI asserted that they should be "condignelie tryit and punisht ... to the deid conforme to the lawis", and when he did grant remissions to certain clans in 1597, he left himself a legal loophole whereby, should they deny their complicity in the crimes of which they were accused and refuse to make redress to the complainer, he would be free of his promise of judicial clemency (i). Owing to the possibility of abuse, fairly stringent regulations governed the validity of remissions. In 1510 instructions issued by James IV stated that no out of date remissions would be accepted at the ayre, nor any that had not been attested formally by the seals in due order (ii); again, in 1593, an Act of Parliament declared that no criminal accused of theft, reif, slaughter or burning was to receive a remission of his

(i) R.P.C.S., v, pp.423, 425-6.

(ii) Pitcairn, i, p.65.

crime until the injured party had been satisfied - although the administrative use of general remissions "for pacifying the brokin countries and borders" was retained unaffected (i). The grant of remissions was a delicate instrument of policy, but although this was in general recognised by the Crown they were not always used with the great care that they required.

Criminal cases involving theft, murder and arson formed the main reason for the visit of the King or his Lieutenant and the Council to the border, yet other business of a judicial and administrative nature was a prominent feature of these expeditions. It has already been pointed out that some at least of the normal processes of government had to be carried out, particularly when the Privy Seal had been taken to one of the frontier towns. But in addition to this the people of the locality were encouraged to take the opportunity, especially when the King or Regent was present in person, to lay before him complaints which normally would have gone through the ordinary courts of justice (ii). At Jedburgh in 1576 a dispute between Walter Ker of Littledean and William Rutherford, a bailie of Jedburgh, concerning rents and duties was settled; in 1597 at Dumfries a case was brought by John Carruthers of Holmendis concerning the possession in liferent by his mother of certain parts of his barony; and in 1602 a complaint was made that one William Cubiesoun had been abducted by servants of the laird of Drumlanrig (iii). At the same time the government itself took the opportunity of supervising the activities of the local officials. In April 1597 a dispute concerning the office of coroner in Annandale and Kirkcudbright was

(i) A.F.S., iv, p.22.

(ii) R.P.C.S., i, p.489.

(iii) ib., ii, p.570; ib., v, p.379; ib., vi, p.357.

decided at Dumfries, while the following November other officials on the West march, including the Stewart of Annandale and Kirkcudbright, the sheriff-depute of Dumfries and the sheriff of Wigton, were put to the horn for their failure to appear before the Treasurer to account for the collection of certain taxes (i).

The most important local officials supervised by the Council during a raid were the wardens of the marches. The instructions given to Angus were quite clear on this point: he was to examine the present state of the negotiations for redress with England on all the marches, including Liddesdale, noting which bills remained unexamined and unredressed; at the same time he was to determine the causes for the cessation of days of truce, and to attempt to resolve all impediments to the normal operation of the frontier administrative machinery. This was no new thing; as early as 1499 the officials of a justice ayre held at Dumfries were given power and authority to supervise the international activities of George, Master of Angus, at that time Governor of Eskdale (ii), but this might have been an unusual development at the time as both English and Scottish officials had to give their approval of the step. On the whole this type of supervision of the wardens was a feature of the latter part of the century. It took the form of examining the wardens' activities, and, if it was necessary, his authority was amplified. At the same time complaints were heard of their failure to carry out their duties, and outstanding cases, or appeals, from the warden courts were heard and decided by the council. At Jedburgh in November 1566, several matters which had arisen between the warden Cosford and John Rutherford

(i) R.F.C.S., v, pp.378-9, 420-1.

(ii) Fraser, Douglas, iii, p.173.

of Henthill concerning the relief of certain bills were examined and decisions given in the presence of both parties (i), and in 1502 so many complaints were made against the wardens at Dumfries that a special meeting of the Council was called to deal with them (ii).

Sometimes the council officials on the expedition took over completely for a short time the operation of the machinery of redress, as they did in 1576 to redress the bills which had accumulated after the disturbance at Reidsyre (iii); and it has already been noted how the Lieutenant of the marches or the King himself could temporarily take over this aspect of the wardens' duties (iv). They thus became responsible for meeting the English wardens, as the Regent Morton did in 1573, and James VI did in 1593 (v); they corresponded at great length - especially Angus and James VI - with the English officials about the most difficult cases (vi); and their justice court took over the functions of the warden court, demanding the entry of those involved in frontier raids, allocating the proportion of the bills to be paid by the 'steilfellows' of the principle offenders, and insisting on surety for the payment of these bills within a short period (vii). This all had the effect of depressing temporarily the status of the warden either to that of a deputy or to that of a private individual on the same level as the other landowners in the area. Thus in 1588, when the barons of the Middle march were charged by the council to enter their tenants for the relief of bills, the warden's name was included in the list (viii). This ensured that

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- (i) R.P.C.S., i, pp.491-2. (ii) ib., vi, p.358.
(iii) ib., ii, p.568. (iv) see Chap.4, section 3, pp.222,225.
(v) R.P.C.S., ii, p.275; O.B.P., ii, p.844.
(vi) Fraser, Douglas, iv, pp.203-32; O.B.P., ii, p.846-7, 849, 852.
(vii) R.P.C.S., iv, p.275; ib., v, p.101.
(viii) ib., iv, p.272.

for a time at least the wardens' kinsmen suffered the penalties for their misdeeds.

This extensive judicial and administrative business was, however, only one aspect of these expeditions to the frontier area; the other, which was partly being carried on at the same time, but which really formed the climax of the expedition, was the military subjugation of the region, and the harrying of defaulters. As stated in Moray's instructions, "ory personis dissobedient [were to] be ridden on and invadit by fyre and sword". The defaulters included many more people than those who had failed to enter themselves to justice. Angus' instructions make this quite clear; he was to pursue all fugitives and execute justice upon them; but he was also to move with all his power against those who refused to subscribe the General Band, or who, having subscribed, failed to carry out its obligations, i.e. against those landlords who had failed to present their kinsmen and tenants before the justices. Those who failed to accept any proffered remission were also to be hunted down.

The importance of this military aspect was generally one of the factors controlling the timing of the raid, and they were frequently postponed until conditions suitable for the military operations obtained. Few expeditions were made in the depth of winter when campaigning conditions were at their worst; many took place in spring or summer, the majority in late autumn. Thus in October 1593 James VI declared his intention of enforcing order on the borders "cheiflie now befor the winter seasoun approche and the nightis grow long" (1). Some of the military factors involved in deciding the time of a raid can be illustrated from the proclamation postponing a raid

(1) R.P.O.S., v, p.97.

from 26 September 1592 until 10 October. The weather had been stormy, and those ordered to accompany the king were required at home to assist in gathering in the harvest; the thieves' corn was in the same condition and until it was gathered in, sufficient pressure could not be put upon them to bring them to order; the moon was in the wane and the "nichtis unneit for service" (i).

Four points arise from a consideration of this statement. First, the importance of suitable weather for the military campaign; a raid in 1564 was postponed for a similar reason, being originally organized "in as myserable tyme and as colde a wynter as hathe bene maynie yeres" (ii). In the second place, it was necessary to ensure that as many of the feudal force as possible would be able to attend. On this occasion they were engaged in a late harvest and could not come without damaging the entire agricultural economy of their estates; in March 1588 they were engaged in tilling the ground and sowing seed; and in December 1578 it was merely considered to be "irksome and panefull" for them to attend at that time (iii). Always it was essential that there was present "a sufficient rowmer to prosecute that service as substantiouslie as his Majesties honour and the suirtie of the cuntrey requyrit" (iv). The third aspect was the apparent necessity for some at least of the expeditions to take place in the late autumn when the thieves had brought in their harvest; thus in October 1577 and 1585 raids already proclaimed were postponed until this agricultural operation was completed (v). Until the harvest was in, the thieves could "nocht conveniently be tane sic ordour with", the "ordour" being the destruction of

(i) R.P.C.S., v, p.13.

(ii) G.Scot.P., ii, p.35.

(iii) R.P.C.S., iv, p.257; ib., iii, p.56.

(iv) ib., vi, p.351.

(v) ib., iii, p.640; ib., iv, p.28.

their ingathered harvest to deprive them of food during the winter following.

The fourth aspect must be examined at greater length; this concerns the relationship of the full moon to the proceedings. On this occasion the raid was postponed from 25 September until 10 October; there was a new moon on 26 September but a full moon on 11 October (i). In 1569 a raid was postponed from 6 October until 18 October specifically to await a full moon which took place five days later, on 24 October (ii); and again a muster proclaimed for 3 November 1585 could not be held because this was "in the mirk of the mone" (iii). This implies that a considerable amount of the military activity took place at night, thus requiring the raid to be timed, in spring and autumn at least, at a suitable phase of the moon. The following table shows the correlation between the dates of some of the musters and the full moon immediately following.

<u>Date of muster</u>		<u>Date of Full Moon</u>	<u>Comments</u>
21 Mar. 1518	...	26 Mar.	... 10 days muster - moon full at middle of raid
18 Jul. 1526	.	23 July	. 15 days muster - moon full at middle of raid
15 Nov. 1561	...	21 Nov.	... 20 days muster - moon full at middle of raid
[1 Mar.] 1569	.	1 Apr.	. raid in full swing on 3 April
18 Oct. 1569	...	24 Oct.	... raid had been postponed to await full moon
25 Jul. 1574	.	2 Aug.	.
16 Nov. 1575	...	17 Nov.	... raid had been postponed from new moon period
10 Nov. 1576	.	7 Dec.	. judicial proceedings lasted until 8 Dec.
18 Nov. 1580	...	21 Nov.	... had been postponed from new moon period
15 Dec. 1580	.	20 Dec.	.
26 Dec. 1582	...	28 Dec.	... had been postponed from new moon period
16 Nov. 1586	.	16 Nov.	.
4 Nov. 1587	...	4 Nov.	... had been postponed from 1 Nov.
2 Mar. 1588	.	2 Mar.	.
29 May 1588	...	30 May	...
8 Jan. 1590	.	11 Jan.	.
10 Oct. 1592	...	11 Oct.	... had been postponed from new moon period
22 Sept. 1599	.	23 Sept.	.

(i) All calculations of the moon's phases are based on the methods and tables given in A. De Morgan, A Book of Almanacs, Lond., 1861, pp. xii, 88-9.

(ii) R.P.C.S., ii, p.31.

(iii) ib., iv, pp.28-9.

It is clear that in a considerable number of instances raids appear to have been timed to coincide almost exactly with the full moon, often beginning some four or five days earlier; the intention obviously was to deal with all the administrative and judicial business before beginning the nocturnal military activities.

A fifth factor of military importance not mentioned in proclamation of 1592 was the necessity of obtaining some measure of co-operation from the officials on the English side of the frontier. For example, in October 1580 a raid was postponed nine die because no answer had been received from England to a request for assistance; again, in November 1582, a similar reason was given for delaying the muster (i). The assistance asked for on these occasions was, basically, that the English officials should keep watch on the frontier to prevent Scottish thieves from escaping into England and being received and hidden there by their friends. In 1528 Angus asked Daere, the English warden, to see that "nane of the saidis malefactouris ... be resset or suppleit within the realme of England in sic sort that nane of thaim escaip to underly correctiouns for thare demeritis and enormiteis", while a similar request was made in 1580 by the Scottish ambassador to the English court, Alexander Burne (ii). Occasionally, however, more specific material aid was sought. James VI asked for the use of English cannon in 1592, and in 1582 he requested the loan of some gunpowder - and some English soldiers, commanded by English officers, for use on the Scottish side of the frontier (iii); in 1572 Morton even asked Elisabeth for money to pay his forces (iv).

(i) R.P.C.S., iii, pp.328-9, 530-1.

(ii) Fraser, Douglas, iv, p.128; C.Scot.P., v, p.539.

(iii) ib., vi, p.209; C.B.P., i, 779.

(iv) C.Scot.P., iv, p.419.

The answers given to these requests tended to vary with the international situation. Scrope in 1580 was unwilling to reply to Argyll's request that no fugitives be reset in England until he had communicated with his central government, and Daore, seeking instructions on a similar point from Henry VIII in 1582 was ordered not to co-operate (i). On the other hand Scrope replied to Moray in 1568, apparently without reference to the central authorities, that he would always be ready to join with the Scots in riding against those who broke the border peace; and the following year Forster put these words into action by meeting Moray at the Wheel Causeway with two hundred men under his command, and assisting the Scots to devastate Liddesdale (ii). In November 1597 the English deputy warden Henry Leigh assisted the Scots by keeping watch on the routes into England to prevent certain Irvines escaping, while the Scots forces burnt their houses and goods (iii). On at least one occasion, in June 1588, English cannon and cannoneers assisted the Scots (iv). Particularly towards the end of the century, and in times of diplomatic friendship, there seems to have been a fair degree of co-operation between the two countries in rooting out border malefactors.

Military considerations, therefore, were of prime importance in determining the time at which the judicial raids should take place. The actual military activities, however, have left little trace. It is possible to surmise that they consisted of attacks by day and night on the dwelling places of the more notorious thieves, the destruction of their houses and the burning of their goods, particularly their stores of corn and other produce.

(i) C.B.P., i, 66; Hy.VIII, v, 1054, 1076.

(ii) C.Scot.P., ii, pp.427, 636. (iii) C.B.P., ii, 832, 844.

(iv) C.Scot.P., ix, p.575.

Perhaps a few individuals, who had been unable to escape to the safety of the more inaccessible parts of the hills known only to the thieves, were apprehended. The government hoped by this show of force, or the threat of it, to encourage the burnames to make some form of submission to the Crown, including the surrender of pledges for their future good behaviour. And it would appear from what little evidence exists that those pledges who were brought in were taken from the clans as a direct result of the military activities. This can be shown by reconstructing the timetable of a typical raid, that of October, 1569.

On 12 September a muster which had been arranged to meet at Hawick on 6 October was postponed until 18 October to await the full moon; the following day, 13 September, the Regent Moray set off for Kelso with only one hundred men (1). In between 28 September and 17 October, routine administrative work was carried on at Kelso; sureties were taken from the landowners of East Teviotdale for the entry of specified people, for the redress of stolen goods, and for paying monetary penalties; some malefactors were handed over to justice, and several legal cases were heard, including some involving religious matters and others totally unconnected with the border area (ii). On 16 October the Regent departed from Kelso to ride upon the thieves, and presumably met the military muster at Hawick on the 18th as arranged. At Hawick sureties were again taken on the 20th, and the following day the first pledges were entered - Batesons, Armstrongs and Elliots (iii). By the 23rd October the forces had moved across the watershed to Canonbie,

(1) R.P.C.S., 11, p.31; Diurnal, pp.149-50.

(11) R.P.C.S., 11, pp.34-40, 52.

(111) ib., 11, pp.40-3.

and more pledges were being entered - more Armstrongs, along with some Grahams, Irvings and Johnstones. The moon was now full, and the peak of the military activities must have been reached. On the 25th, in camp, further west by the Water of Milk, further pledges from the Johnstones and the Bells were received, and the final group of pledges entered at Dumfries on the 29th - Littles, Charters, Moffats, Bells and Carriles (i). On 3rd November the Regent returned to Edinburgh with some sixty pledges, after a most satisfactory expedition (ii).

On this occasion the proceedings were divided into two distinct parts. The judicial and administrative business was quietly dealt with in the more civilised area of East Teviotdale, where the band signed during a raid of the previous April had only just gone out of force; the military campaign lasted just over ten days, and it was as a result of it that pledges were taken from the more unruly areas of Upper Teviotdale, Liddesdale and Eskdale. This pattern was not invariable. Sometimes the military attacks preceded the judicial activity, as it did in 1510 when James IV, after marching with a large force to the Water of Rule, took several thieves to Jedburgh where they were tried, and where he accepted the submission of the clans and took pledges (iii). Sometimes the military and judicial proceedings were intermingled, as in 1562 when Moray captured fifty-three thieves at Hawick and tried them immediately, a score of them being acquitted (iv). All this shows how effectively the military expeditions, originally used purely for political purposes, could be combined with the machinery of the justice ayre for administrative purposes.

(i) R.F.C.S., ii, pp.45-6, 50.
(iii) Leslie, ii, p.134.

(ii) Diurnal, p.151.
(iv) C.Scot.P., i, p.637.

(a) Results of judicial expeditions. It is difficult to assess the results of these judicial raids, as very few of them have left substantial records; the number of men hanged or imprisoned for their misdeeds, or the number of pledges taken from the clans is often known only incidentally through the writings of the chroniclers and diarists of the time, who, naturally enough, noted only the most outstanding raids. These writers were interested mainly in the punitive features of the raids; Robert Birrell, for example, noted in 1567 the number of thieves arrested and executed, and the number of pledges taken. Where there were no such figures to record the tendency was to dismiss the expedition as a failure "in quhilk thair was litle or nathing done bot the destruction of [certain] places and als of verry many cornis" (i). Raids in which the judicial element predominated were ignored altogether, or scathingly dismissed as one in which "brokin men ... war punieist be thair pursis rather than thair lyvis" (ii). These writers, who had possibly, like Moysie, suffered personally from the activities of the border clansmen, were extremely critical of the judicial proceedings which they regarded as unwarranted leniency.

This attitude was shared to certain extent by English observers who regarded the justice ayres merely as a source of profit to the Scottish Crown, where "all the subjects paithe as there offences er" (iii). This attitude of Englishmen and inland Scot alike considerably underrated their true value. Spectacular although the military results could sometimes be, it is probable that the judicial proceedings made a much more permanent impact on the frontier region. The executions, the taking of pledges and the

(i) *Diurnal*, p.133.
(iii) *Hamilton*, i, p.73.

(ii) *James Sext*, p.138.

disruption of the economic life of the clans had temporary results only; the pledges, as has already been noted, generally escaped or were soon set free, executions were no real deterrent, and houses could in these times be soon rebuilt, while the destruction of agricultural produce in the Autumn was followed by renewed thieving activities in the Winter and Spring. Accordingly, even when military measures were repeated at regular intervals, no permanent results in the maintenance of law and order could be achieved. They did serve an essential purpose, that of temporarily showing the determination and power of the government in an area where the inhabitants were unwilling to recognise its authority; but at the same time they tended to increase rather than diminish the disorder there. On the other hand, the judicial proceedings, by bringing the more impartial law and justice administered by the central courts to the borders, were of more permanent benefit, provided that such administration was regular. They provided impartial justice locally, and the inhabitants were brought into a direct contact with the central powers otherwise unobtainable; the signing of the General Band, always more voluntary than the submission of pledges, was a more permanent guarantee of local co-operation than the death and destruction brought by the military arm. Even if justice in the shape of the death penalty was not always done at these courts, damages and amercements were exacted, forcing the malefactor or the lord responsible for him to suffer to a certain extent, and to realise that some consequences arose from his misdeeds. For success in this, these courts had to be held regularly; but, since the routine operation of the administrative machinery was, as shall be seen, frequently interrupted for political and other reasons, regularity was achieved only occasionally, and for short periods of time. Yet it is clear that the civilising influence of the law, regularly administered, could considerably improve conditions on the frontier.

Chapter 6The Frontier Administrative Machinery in Operation

The machinery of Scottish frontier administration has been described in all its individual parts; it now remains to attempt to show how these parts interlinked and worked together, and how effective the machinery as a whole was in operation. Previous assessments of efficiency and effectiveness have been confined entirely to that of the international warden machinery, since this aspect of border administration has received the greatest attention from historians. The general opinion is that warden frontier control was almost completely ineffective, particularly during the reigns of Elizabeth and James VI. Hodgkin (1) attributes this to an increasing anarchy on the frontier, paralleled by a neglect of duty on the part of the wardens on both sides, leading to long intervals between days of truce; this neglect he believes to have arisen from the character of individual wardens, the turbulence of Fernihurst, the slackness of Forster, a general unwillingness on the part of "fine gentlemen, engrossed in higher politics, to give their attention to settling the quarrels of the humble borderers". Coulomb and Tough attribute it entirely to the breakdown of administration; the wardens, particularly those of Scotland, had insufficient authority to carry out their duties, days of truce were not held regularly at monthly intervals as the treaties demanded, and the Scots frequently refused redress or justice in certain circumstances (11).

Accepting for the moment the assumption that the machinery of

(1) Hodgkin, pp.27-8

(11) Tough, pp.143, 145; Coulomb, pp.70-2. Coulomb, in blaming the Scots for the breakdown, errs in accepting at their face value the reports sent to their Government by the English wardens.

warden courts and international days of truce failed to operate adequately during the reigns of Elizabeth and James VI, it is clear that none of these historians attempts to give any complete explanation of this; such an explanation may in fact be impossible, but each takes far too narrow a view. It is clear to the present writer that the effectiveness of the warden machinery cannot be assessed by itself. The wardens were but one part of the system of frontier administration, and it is the effectiveness of the entire system which must be assessed - the form of internal administration on each side of the frontier, and the methods of control exercised by both central governments over their officials, for example, must be included. Furthermore, it cannot be assumed, as Coulombhas done, that such an assessment should be limited by purely administrative considerations. It is insufficient to say that the system broke down at some point because a particular administrative difficulty arose; an attempt must be made to find out why that difficulty arose at that particular time, and this need not necessarily have had anything to do with administration at all. For, given a certain degree of goodwill, it is clear that the men of the time had the administrative ability to solve all such problems. The point made by Hodgkin, of defects in the character of the officials, is of greater importance; and Tough tentatively points the way when he talks of distrust between the parties on each side of the frontier (1). The truth is that the problems of administering a frontier society required much more than administrative ability to solve them; a desire to solve them was also necessary.

The importance of this willingness to make frontier administration work can be seen at two levels, the local and the national. The frontier

(1) Tough, p.176.

officials themselves, the wardens, lieutenants and justiciars, had to be interested personally in successful administration; but their motives and actions could be influenced by the part they were playing in family feuds or political factions, and often the existence of a quiet frontier ran counter to their personal interests. When this was so, pressure from the central government was necessary to ensure that they did their duty; this pressure was conditional on two factors - the ability of the government to take these steps at that particular time, and a desire to take them - and sometimes neither was present. Hence efficient frontier administration depended partly on the ups and downs of internal politics, particularly in Scotland, and partly on the relationships between the two powers; this latter factor was generally conditioned by the balance of power on the continent.

In order to show frontier administration in operation, it is therefore necessary to bring the borders into a much wider perspective, for international relations throughout Western Europe, and internal factions in both England and Scotland, all affected the local conduct of affairs. An attempt will now be made to show the intermingling of these factors, and their influence on Border administration over five short periods within the 16th century - the Angus administration during the minority of James V, 1524-8; the rule of James V, 1534-9; the government of Mary of Lorraine, 1552-8; the regency of Morton, 1573-80; and the rule of James VI, 1584-98.

1. The Regency of Angus, 1524-8.

The conduct of affairs on the Anglo-Scottish border was conditioned during this period by the course of the war between France and Spain, which had begun in 1519 when Charles V was chosen Holy Roman Emperor by the College of Electors in preference to Francis I. England, growing in power, held for a

time the balance between these two warring nations until the decision of Henry VIII and Wolsey, finally taken in August 1521, to ally themselves to Charles V, brought England into the war against France. This in turn caused tension to develop between England and Scotland, bound to France by strong traditional ties; Francis I almost at once authorized the anglophobe Duke of Albany to return to Scotland (November 1521) with the specific intention of creating trouble in the English rear, and Scottish partisans of England, such as Archibald, Earl of Angus, lost all power and influence in Scottish policy.

Albany's actions were controlled solely by the war policy of France. The normal system of frontier negotiation through days of truce was allowed to lapse after January 1522, and no attempt was made to control the activities of the borderers. He attempted two invasions of England, both of which failed owing to the reluctance of the Scottish aristocracy to follow him to another Flodden. He was recalled to France on 20 May 1524, partly because of this failure but mainly because of a gradual change in international politics. England, disillusioned with the Spanish alliance, returned to the position of holding the balance of power, and it was obviously in the interests of France to avoid any policy in Scotland liable to antagonize England. Within a few days of Albany's recall to France, a French envoy, Giovanni Giovacchino di Passano, was in London conducting secret negotiations for an alliance (1).

The effect of all this on Scotland was immediately apparent. Although James Beaton, Archbishop of St Andrews and Chancellor, now in charge of the French party, attempted to raise the country on the rumour of an English

(1) Mackie, Tudors, pp.314-15.

invasion, he had little influence (i). Queen Margaret, widow of James IV and sister of Henry VIII, rapidly formed an opposition group with the assistance of James, Earl of Arran, whose policy tended to be pro-English; by August, little more than two months after Albany's departure, this party included the earls of Moray, Lennox, Eglinton, Glencairn and Cassillis, along with many other lords, and had succeeded, with military forces paid by England, in dominating Scottish politics by "erecting" James V king under Margaret's tutelage, and in imprisoning Beaton, leader of the French faction (ii).

The Scottish frontier officials were closely allied to this party. John, Earl of Lennox, who had been warden of the East march and Lieutenant of the Merse and Teviotdale since December 1523, was one of the earliest adherents. Robert, Lord Maxwell, warden on the West march, was a close friend of Arran, and had probably been involved from the beginning; he was the man of action in the party, being in charge of the military forces paid for by England, and also responsible for Beaton's arrest. Andrew Ker of Casford, warden on the Middle march, was an adherent of Lennox along with other borderers (iii), and was involved with Maxwell in the arrest of Beaton's servants.

A favourable international climate, a Scottish government tending towards friendship with England, and frontier officials willing to put this policy into operation, all had an immediate effect on border administration. Nominally England and Scotland were still at war, but as early as June 1524,

(i) A.D.C., p.201.

(ii) Ry.VIII, iv, 1, 602, 656-7, 665.

(iii) ib., iv, 1, 43.

the wardens of the West march co-operated politely, if frigidly, in exchanges of prisoners of war (i). In August commissioners of both countries met to discuss the "commounweille of baith the realmis" and an abstinence was concluded for three months from September 4 (ii). This was immediately followed by the renewal of Lennox's commission as warden and lieutenant, probably to emphasise to England the fact that much of border administration was now under the direct control of the government itself, and in the hands of a man favourably inclined towards England. At Council meetings on 10 and 15 September the borders were discussed, and arrangements made for an expedition against the thieves of Liddesdale to take place the following month (iii).

It is obvious that effective frontier administration was desired by the Scots at this time, and an attempt was being made to use the entire apparatus - commissioners' meetings to provide a framework for good government, direct control over the wardens, and direct interference by the central powers in the form of a judicial raid against the thieves. But these favourable conditions were vitiated by two facts: first, that the Scots government was basically unstable, and secondly that the borderers were at variance among themselves. The trouble began at the council meeting of 10 September; because of a feud between Buccleuch and Gosford the council considered the borders could not be efficiently administered, and both were imprisoned. Gosford was almost immediately released when his brother entered into ward as a pledge for the efficiency of his administration (iv). Buccleuch, on the other hand, appears to have remained in prison for some time longer,

(i) Ry.VIII, iv, 1, 432, 434.

(ii) A.D.O., pp.204, 206; Rymer, xiv, pp.21-2. The Scots commissioners included both Arran and Lennox. This diplomatic activity continued until a more definitive truce was concluded in January 1526 (Rymer, xiv, pp.23-30).

(iii) A.D.O., pp.209, 211.

(iv) A.D.O., pp.209-10; Ry. VIII, iv, 1, 651, 656.

possibly because his animosity towards the English was well known and he was, as the Queen suggested, a danger to peace on the borders; and possibly because of the Queen's personal animosity towards him, caused by a dispute, two years before, over the rents of some lands in Ettrick forest (i). Central interference in this feud increased rather than diminished tension in the frontier region; it also brought to a climax dissatisfaction with the government. The Queen became amorously involved with the youthful Henry Stewart, a son of Lord Avondale, and gave him sufficient authority in the kingdom to cause great disgust and discontent to Lennox and others (ii). This, combined with the imprisonment of his supporter, Buccleuch, led Lennox to disassociate himself from the Queen's party, along with Glencairn. By the beginning of October only Arran and Maxwell remained faithful to the Queen, and they were gradually turning to the idea of reopening the French alliance (iii). The result of all this was that the two most important wardens of the marches were politically antagonistic to each other, there was no unified frontier policy, and the raid against the thieves of Liddesdale was a failure (iv).

It was at this point that Archibald, Earl of Angus, returned to Scotland. He had left France immediately the Albany administration had broken down, and was in London on 28 June 1524; as early as July the Scottish government under the Queen was disturbed by the threat of his return to Scotland, and it is probable that he was restrained only by Henry VIII (v). But when it became evident that the Queen's government was incapable of controlling Scottish affairs, Angus, closely bound to the English monarch, was unleashed

(i) A.D.C., pp.158-60.
(iii) ib., iv, 1, 729, 762.
(v) ib., iv, 1, 469, 488-91.

(ii) Hy. VIII, iv, 1. 800.
(iv) ib., iv, 1, 750.

to take over the Scottish administration and to follow a definitely pro-English policy. Lennox, Glencairn and Buccleuch immediately allied themselves to Angus, shortly to be followed by other important Lords including Archbishop Beaton. By the end of January 1525, the Queen was virtually isolated, except for Gavin Dunbar, the Archbishop of Glasgow; even Arran and Maxwell had withdrawn, hoping to effect a compromise between the two conflicting parties in order to achieve stable government (i). This they achieved when, in February, Angus became the leader of a regency council of eight men in full control of the affairs of the country.

It has already been shown that even before Angus's return, conditions favoured good frontier relations between England and Scotland; these conditions were now accentuated, partly by the pro-English policy followed by Angus, but mainly by changed international circumstances. On 25 February 1525, Francis I was defeated and captured by the forces of Charles V at Pavia. Although the initial English reaction to this was to exploit the situation in order to make Henry VIII king also of France, the coolness of Spain to these proposals led to Wolsey reopening negotiations with France; and on 30 August an alliance with the French Queen-Mother, Louise of Savoy, was concluded. This alliance was continued after the release of Francis in March 1526, further treaties being signed in April and August 1527 (ii). In Scotland, the result of this major English diplomatic revolution was to eliminate politically any party which wished to play off against Angus a pro-French policy. Those who favoured France now had to alter their attitude towards England, and for

(1) *Hy. VIII*, iv, 1, 762; *S.P.Hy.VIII*, iv, pp.299-309.

(11) Mackie, *Tudors*, pp. 315-18.

at least two years English friendship influenced all political parties in Scotland. Even James Beaton and Gavin Dunbar, both naturally friendly towards France, each sought, without any political inconsistency, English help to persuade the Papacy to decide their archiepiscopal quarrel in his favour; Dunbar, probably in October 1525, even went to the extent of excommunicating all the border thieves in order to impress Wolsey (i). When the truce between the two countries expired at the end of July, the Scottish parliament decided to open negotiations for a more permanent peace; commissioners met at Berwick in September and January, and on 15 January 1526 a peace treaty was concluded there which provided for this (ii).

Throughout the entire period during which Angus retained control, conditions were basically favourable to good frontier relations, and it is evident that Angus intended good frontier relations to exist. On 15 March he himself secured the appointment of warden and Lieutenant of the East and Middle marches, Cesford having been dismissed five days earlier, and Lennox presumably withdrawing from office in his favour (iii). His object in this was probably to control the important business of negotiation with England in person (iv). Neither of his forerunners in office were in any way untrustworthy; Lennox was closely allied to him and firmly in favour of a pro-English policy, being in receipt of an English pension, while Cesford, also in favour of England, had been recommended by Magnus, the English ambassador, for a pension as early as January 1525 (v). Possibly Angus hoped, by removing Cesford from office, to mitigate the virulence of his feud with Buccleuch.

(i) For the quarrel between Beaton and Dunbar over the relationships between the Sees of St Andrews and Glasgow, see Easson, Dunbar, pp.18-24.

(ii) A.P.S., ii, p.286; A.D.C., p.226; Rymer, xiv, p.115.

(iii) A.D.C., p.215. (iv) of. S.P.Hy.VIII, iv, p.354.

(v) Hy.VIII, iv, 1, 1572, 1004.

On the West march Maxwell retained his office; although he was not closely tied to Angus's party, he too was in receipt of an English pension, and in fact he was personally too powerful in his march to be removed from office (i). For Liddesdale, the Earl of Bothwell was still a minor, but his tutor, Patrick Hepburn, Prior of St Andrews, had been associated with Angus and his party from the beginning (ii). Thus all the frontier officials could be expected to favour good administration and co-operation with England.

Angus immediately began to act energetically. On 27 March, less than two weeks after undertaking the wardenship, he convened a meeting at Edinburgh of all the most important borderers of his two marches, and persuaded them to sign a band of assistance to him which contained many of the features later associated with the General Band. Two weeks later he was on the borders in person, presumably to examine the possibility of keeping control there (iii). Thereafter, during the three years in which he remained in power, Angus frequently visited the frontier region for days of truce and judicial raids against the thieves. There were five main raids during that period, with a sixth scheduled to take place just at the time when Angus fell from power (iv). It is more difficult to assess the numbers of days of truce, as it is certain that the records do not mention all that were held (v); but it is clear that several were arranged and held during these three years, many of them under Angus's personal supervision or under the supervision of other members of the council.

From this it might be assumed that the machinery of border

(i) A.D.C., p.216; Hy.VIII, iv, 1, 1448 (iv, 3). Pensions were also being distributed at this time by the French government, but it is not clear to whom (Teulet, i, pp.56-8).

(ii) S.P. Hy.VIII, iv, p.304.

(iii) Pitcairn, i, pp.127-9; Hy.VIII, iv, 1, 1259.

(iv) see Appendix 7.

(v) of, Tough, p.145. Generally those recorded were those at which little justice was done.

administration was working adequately in all its forms; this, however, was not the case, as the results achieved were not satisfactory. Some of the raids produced results; in May 1525, 12 pledges were taken from the Liddesdale thieves, while in April 1527, 18 of the thieves were killed during the military operations, 14 hanged and 12 pledges taken to Edinburgh. On other occasions Angus and his forces returned home with little accomplished; in July 1526 the justice courts held at Jedburgh were partially ineffective because of local opposition, and in March 1528 a raid against the Armstrongs failed because Maxwell and the Kers failed to co-operate. Similarly with days of truce; some were held successfully, bills being fyled and redress given, for example on 27 July 1525, 23 and 25 August 1526, when six bills were fyled on each side, and in September 1527, when Hume reported that he had been meeting Fernihurst regularly every 14 days for redress (1). On the other hand, many were unsuccessful. According to English reports, the Scots wardens often failed to appear on the appointed day; Angus himself frequently did this, for example in June and December 1525, and in March and November 1526 (11), while complaints were made against Maxwell that he too refused to keep days of meeting (111). Even when the wardens did meet, the negotiations were by no means successful; Angus refused to give redress at Redenburn in February 1526, as did Hume, his deputy, at Ladykirk the following November (1v). Although Magnus could occasionally report to England that the Scots borders were kept under control, the general picture is one of comparative disorder and unsuccessful administration.

The international situation was favourable and goodwill towards

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- (1) Hy.VIII, iv, 1, 1527; 1b., iv, 2, 2449, 3421.
(11) 1b., iv, 1, 1427, 1447, 1469, 1806-9, 2035; 1b., 2, 2678.
(111) S.P.Hy.VIII, iv, p.440.
(1v) Hy.VIII, iv, 1, 1968; 1b., iv, 2, 2625.

the other on the part of both countries encouraged good frontier control; hence the reason for the partial breakdown of administration in this period must be sought in the internal situation in Scotland, and in the tension created by Angus's rule there. For convenience the analysis of this tension will be divided into two sections, tension on the borders and tension in the country as a whole; but, as will become apparent, these two forms of tension interacted with each other to produce a series of complex and delicate political situations.

Tension in the frontier region stemmed from two sources. First, the feuds existing between the various border families, particularly between the Kers and the Scotts, and the Humes and the Hepburns, created a social and political atmosphere within which administration was difficult (1); these people disturbed the country by their criminal activities, while politically they were invariably to be found on opposing factions - Buccleuch, for example, was always opposed politically to Gosford. Secondly, the impact of Angus on the administration of the area caused considerable trouble. Although Angus was careful to take a band of assistance from the borderers when he took over the wardenship, his action created discontent. Andrew Ker of Gosford, who had been an efficient warden for some years, and who favoured peace and co-operation with England, must have resented being superseded; in this he was probably joined by Fernihurst and Mark Ker of Dolphinton, who had so often been associated with him in warden activities. Furthermore, Fernihurst had had a personal quarrel with Angus in 1520 over certain conflicting rights of jurisdiction in Jedburgh (11). While it is unlikely that Lennex objected to his

(1) see A.D.C., p.203, for Hume's feud with the Master of Hailes.
(11) Leslie, ii, p.177.

displacement on the East march, it is almost certain that George, Lord Hume, resented the increased influence of Angus in an area where he himself would normally have a monopoly of power (i). His brother, Alexander, had been executed for treason by Albany, and he himself had earlier co-operated with Angus against Albany; he was to a certain extent pro-English in policy and no doubt had hoped to have the wardenship himself, as his brother, father and grandfather had had. In March 1525 this local resentment seemed of little importance, but by the end of the year it expressed itself in a political revolt on a national scale.

On the West march, Maxwell retained his appointment as warden owing to his complete monopoly of power in that region; yet there was tension between him and Angus. Maxwell's political allegiance was to James V and to the Queen mother rather than to the regent, and he resented the increasing domination of the king's person by Angus. But he was a realist and he accepted Angus while he was securely in power and did not express any resentment politically. The tension was expressed rather in administration; there was little co-operation between the two wardens, and some open disharmony. There were, for example, a series of complaints levied against Maxwell's efficiency towards the end of 1525, and he was summoned before the Privy Council to give an account of his conduct (ii). Maxwell's reply to this 'interference' in his office was to tender his resignation. This the Lords of Council refused to accept, claiming that only Parliament could accept such a resignation, and that Maxwell must remain in office (iii). These were

(i) As Lennox had no land in the Merse (unlike Angus) Hume would not bear him so much resentment.

(ii) e.g. Hy.VIII, iv, 1, 1836; S.P.Hy.VIII, iv, p.440; A.D.C., p.234.

(iii) see Chap. 2, p.63.

essentially delaying tactics. Angus could not at the time give the matter his personal attention being engaged in subduing the revolt of the Kers and the Humes; furthermore it was perfectly clear that only Maxwell could maintain any semblance of order on the West march, and that, were any other person appointed to his office, only feuds and disturbances would result. The upshot of this was that Maxwell, taking advantage of Angus's difficulties, had his commission renewed on 29 January on terms considerably more favourable to himself (i). The tension created by this incident was continued the following month by a dispute over the control of Liddesdale. Nominally this appertained to the tutor of the young Earl of Bothwell, but both wardens claimed the right to act there. Geographically Liddesdale was linked with the West march; moreover Maxwell had married Agnes Stewart, widow of Adam, Earl of Bothwell, and may have felt he had some claim through her to administer the region. Administratively, however, Liddesdale was part of Roxburghshire and was linked with the Middle march; and early in March 1526, Angus was declared responsible for that region and acted as its keeper (ii). Although the dispute was solved in this way, it is certain that tension between the men remained at least until September 1527 when the dale was once more under the control of Bothwell or his tutor (iii). The fact that Maxwell's brother, John, Abbot of Dundrennan, had hoped to gain promotion to Melrose and failed, may have caused additional displeasure to Maxwell (iv).

All this tension in the frontier region created administrative difficulties there, which were in turn accentuated by political disturbances

(i) A.D.C., p.237.

(ii) Ib., p.239; Hy.VIII, iv, 1, 2003, 2017.

(iii) Ib., iv, 2, 2678.

(iv) Ib., iv, 2, 3404.

affecting the whole of Scotland; for in these national revolts borderers played a conspicuous part. There were two major revolts against Angus in 1526, the first, in January, led by Arran, the second, in September, led by Lennox.

Although Arran was a member of the Regency council appointed in February 1525, and was in receipt of a pension from England, his political allegiance was to the Queen mother rather than to Angus, and he was by nature unfriendly towards England. He appears to have been politically inactive during most of 1525 (i), although he retained contact with Eglinton, Cassillis and other former supporters of the Queen. Some time before December 1525, this group was reinforced by the Humes and Kers, whose personal discontent with Angus has already been noticed. The Humes, in fact, came into opposition with Angus as early as September, when Patrick Blackadder of Tulliallan, Archdeacon of Glasgow, who had been involved in a dispute with John Hume, Abbot of Jedburgh, over the fruits of Goldingham priory, was killed by the Humes of Wedderburn (ii). The crisis came when Angus refused to hand over the person of James V into Arran's custody, as had been agreed the previous February. Arran's party, with Moray, Eglinton and Cassillis, rose openly against Angus, meeting at Linlithgow with armed forces which included Hume and Fernihurst (iii). At no time was this a serious matter for Angus, who had raised a force of 4000 men; the rebels did not act coherently, and by 20 January 1526 had been dispersed owing to the defection of Moray and Arran, who submitted to Angus and the King (iv).

This did, however, have a serious effect on border affairs.

(i) Hy.VIII, iv, 1, 1273.

(ii) ib., iv, 1, 1837; A.D.C., p.207.

(iii) Hy.VIII, iv, 1, 1878.

(iv) ib., iv, 1, 1908, 1912.

Angus was forced to admit to Henry VIII that his frontier administration had broken down temporarily "throw omenent besynes and impedimentis" (1); he was in fact so heavily involved in crushing the revolt that he could pay no attention to frontier matters. The English wardens, however, prevented open breaches of the frontier by raising special forces to guard the passes into England, thus preventing any embarrassment to Angus. Angus himself had no deputies who could deal with frontier affairs in his absence. Buccleuch was with him in the field against the rebels, and although Cesford remained on the Middle march throughout the rebellion, ready to give redress to the English warden, he was unwilling to act on any orders given by Angus (11). On the West march Maxwell, whose sympathies were with Arran although he did not openly support him, refused redress to the English, and seized the opportunity, as has been noticed, to improve his position at Angus's expense.

Nor did the break up of the revolt immediately improve matters, for the Humes and Fernihurst remained unco-operative, their rebellion against Angus being personal rather than political. They failed to attend a council meeting on 26 February, and still refused to accept the regent's authority in March (111). Angus was therefore unable to control the frontier adequately; he failed to attend days of truce, and no redress was given. In May 1526, Hume, Fernihurst and Cesford were accused of treason for their failure to assist Angus at days of truce by presenting their men for justice, for making factions against the king whereby redress with England could neither be given nor received, and in general for "wirkand and laiberand ... that the said

(1) Fraser, Douglas, iv, pp.105-6.

(11) Hy.VIII, iv, 1, 1910.

(111) ib., iv, 1, 2035.

abstinence quhilk was contractit and concludit [with England] ... suld be brokin ...". But the situation changed suddenly, and the Humes and Kers were reconciled with Angus; When their cases came before Parliament in June they were exonerated, and, on 20 June, Hume signed a bond of manrent with Angus (i). Arran too became an active supporter of Angus at this time. These reconciliations were of importance for the regent, who now had to face a revolt led by his colleague Lennox.

Lennox originally had been a supporter of the pro-French policies of Albany, but, disgusted with the activities of Queen Margaret and influenced by the alliance between France and England, had joined Angus and given him continual support in all his policies. Early in 1526 he appears to have become associated with Gavin Dunbar, and thus brought into closer personal contact with the king (ii). It is possible that he came to believe that Angus was carrying out a policy contrary to the king's wishes, and that he was in fact keeping James virtually in captivity. Shortly after the June Parliament, in which Angus achieved complete dominance, Lennox signed a personal band with the young king in which he undertook to free him from the regent's control (iii). This he immediately set about doing. Towards the end of July, when James was returning with Angus and Arran from Justice courts held at Jedburgh, Buccleuch, who had followed Lennox in his change of political allegiance, attacked the royal forces at Melrose with the object of 'rescuing' the king. He was repulsed owing to the presence of forces belonging to Angus's new allies, the Humes and the Kers. Lennox was not daunted by this failure, and in August openly accused Angus of holding the

(i) A.P.S., ii, p.309; Fraser, Douglas, iii, p.226.
(ii) Fraser, Lennox, i, p.356.
(iii) ib., ii, p.226.

king in captivity. Gradually he drew together a party which included not only the earls of Crawford and Cassillis with Buccleuch and other lords, but also the two rival archbishops and other clerics of importance (1). This party was crushed by Angus at Linlithgow on 4 September, and in the engagement Lennox was killed; without his leadership the movement to free the king petered out.

The effect of this revolt on frontier administration differed from that of the previous one. The death of Gasford at Melrose re-opened the feud between the Kers and the Scotts, but disorder did not develop to any great extent, and, on 17 August at the height of the crisis, Magnus could report that the borders were quiet and well administered. This is confirmed by the fact that successful days of truce were held on the East and Middle marches at the end of August and beginning of September (11). Angus, with the military support of Arran, was able to deal adequately with this revolt and have the borders efficiently administered by his new allies, George Lord Hume, Andrew Ker of Fernihurst and Mark Ker of Delphinton. Maxwell, allied to Arran, made no move at this stage.

By the end of 1526, Angus was in a dominant position and there were no open revolts against him during the following year and a half. The international situation was untroubled; France and England were drawn more closely together by the treaty of Westminster (30 April 1527), ratified four months later at Amiens, and their common distrust of Spain was heightened when troops of the Emperor sacked Rome. Scottish internal politics were therefore little influenced by the conflicting claims of alliances with France

(1) A.D.C., pp.250-1; Hy.VIII S.P., iv, p.456. Angus had just removed Beaton from his office of Chancellor.

(11) Hy.VIII, iv, 2, 2402, 2449.

and England. On the borders, Angus held a very successful raid against Liddesdale in April 1527, followed by another in June, and redress was effectively made at days of truce. This favourable situation was, however, shortlived.

On 4 July 1527, Sir William Lisle, an English borderer who had been imprisoned the previous year at Pontefract Castle on a charge of rioting and rejection of royal jurisdiction, escaped with his adherents and fled to Scotland where he was befriended by certain Armstrongs; with a band of borderers from both sides of the frontier he caused considerable damage, mainly against his personal enemies in England (i). The English government immediately requested the Scots to arrest Lisle and his accomplices, and, after a month's delay, Angus replied that he would "nother spair cost travell nor danger of body to tak thair personis"; this was later followed by a further statement to the effect that the rebels were not within Scotland but hiding in the Debateable Lands (ii). Further pressure was put on Angus throughout September and October to give redress for the damage done by Lisle, and either to force the Scottish wardens to arrest Lisle or allow English officials to enter Scotland for this purpose; no action appears to have been taken by the Scottish government, and Angus sent further apparently evasive replies to Henry VIII (iii). Lisle's raids continued unchecked and the English frontier administration began to crack under the strain; the English wardens failed to co-operate with each other, asserted that Lisle's success was due entirely to Scottish assistance, and insisted that special measures were required (iv).

(i) Hy.VIII, iv, 2, 2370, 2402, 3230, 3344, 3385.

(ii) ib., iv, 2, 3358; S.P. Hy.VIII, iv, p.469.

(iii) Hy.VIII, iv, 2, 3404, 3407, 3545-6.

(iv) ib., iv, 2, 3421, 3501, 3521, 3552.

On 2 December 1527 the young and inexperienced Henry, Earl of Northumberland was appointed warden-general with extensive general powers, which Du Bellay, the French ambassador in England, believed were to be used solely for dealing with the Lises. His appointment was greeted by further letters from the Scots, promising co-operation and offering days of truce; this co-operation Northumberland eventually rejected (i). He concentrated on restoring order on the English side of the frontier. Known accomplices and assistants of the Lises were repressed effectively within three weeks of his arrival on the frontier, some of his methods being similar to those used by the Scots in judicial raids - the threat of ecclesiastical censure, the execution of some of the offenders and the burning of their houses and corn, the taking of pledges from the surnames and the subscription of articles similar to the Scottish General Band (ii). The result of all this was that William and Humphrey Lisle surrendered on 26 January 1528, along with 15 others; they were imprisoned in Alnwick, and later executed, with the exception of the young Humphrey (iii).

This seems to be a triumph of English frontier efficiency combined either with Scottish inefficiency or an unwillingness to co-operate, and scarcely accords with the picture already drawn of frontier co-operation at this time. But this is an erroneous interpretation of these events. Northumberland was regarded by his contemporaries as lacking the mental capacity to conduct even his own affairs in person; whether this was true or not, it is clear that his activities, on the English side of the frontier only, could

(1) Hy.VIII, iv, 2, 3696-6, 3704-6, 3762, 3777, 3796.
(ii) ib., iv, 2, 3795, 3816.
(iii) ib., iv, 2, 3850, 4133.

not by themselves account for the capture of the Lisle, who, presumably, could always have sought refuge with their friends in Scotland. This refuge must not have been available to them in January 1528; moreover, it is certain that Angus had every incentive to co-operate actively with the English at this time. Although he had crushed the major revolts against him, he realized that he still had to face much opposition, opposition which favoured a French rather than an English connection, and which was centred round the figure of Albany. Angus viewed the increasing friendship of England and France with alarm, fearing particularly the return of Albany to Scotland with English as well as French support. This fear is shown in correspondence in which Henry is requested to prevent such an occurrence (1). While it was extremely unlikely that Henry VIII would follow the dangerous course of permitting Albany's return, the very possibility would force Angus to co-operate on the borders to the utmost of his ability. Hence when Angus wrote that he intended to apprehend the Lisle, or that he could not do so because they were in the Debateable Lands, it is probable that he was telling the truth. It is significant that Henry VIII gave no indication of his attitude towards Albany throughout the period of the Lisle affair. Not until the Lisle were safely imprisoned did he assure Angus that Albany would not be allowed to return as long as the Scots government remained friendly to England; in the same letter the Scots were thanked for their help in the apprehension of the Lisle (11). The implication is that the guarantee was given for services rendered. Therefore, when Angus claimed that he had contributed towards the

(1) Hy.VIII, iv, 2, 3704, 3773. This was a real fear. Albany had already suggested to Francis I that, with English help, he should be allowed to go to Scotland to reorganize matters there (Teulet, i, p.71)

(11) Hy.VIII, iv, 2, 3924.

surrender of the Lises through the activities of his wardens, it was a claim that Henry himself was probably willing to endorse (i).

The fact^{that} Angus, in spite of his efforts during five months, was unable to apprehend the Lises in Scotland, does show that his co-operation with England lacked efficiency. This was caused by conditions within Scotland. Although there were no open revolts against his rule, it is apparent that Angus's power was gradually being undermined. The course of this is by no means clear. It is probable that, unsuspected by Angus, a party antagonistic towards him was gradually being built up, possibly centred on Gavin Dunbar, the former schoolmaster of the king. The king himself may have been aware of this movement; certainly he tended to favour men opposed to Angus. For example, Buccleuch, who had been so openly active against Angus's regime, was leniently treated. Although men such as Cassillis and Lord Lindsay forfeited their lands in the legal proceedings taken against them in November 1526, Buccleuch obtained a respite and was not forfeited, although a summons of treason was raised against him (ii). Further letters of respite preventing execution of the summons were issued throughout 1527, until he received a remission for his crime in December (iii); he was still at this time expected to go into exile in France, but he was freed even from this obligation by a full pardon in February 1528 (iv). Later he was appointed cup-bearer to the king, an office he exercised through deputies for the time being, possibly because of the displeasure it would cause Angus (v). This favoured treatment of Buccleuch could scarcely have pleased Angus, but he must

(i) Ry.VIII, iv, 2, 4116.

(ii) S.P.Ry.VIII, iv, pp.460-1; A.D.C., p.252.

(iii) Fraser, Scotts of Buccleuch, i, p.83; ib., ii, p.149.

(iv) ib., ii, p.150; A.D.C., p.272.

(v) Fraser, Scotts of Buccleuch, i, p.84.

have been unable to prevent it. It certainly displeased the Kers, whose leader had so recently been killed by Buccleuch's men, and it is possible that they realised that Angus's power was now on the wane; in March 1528 they felt they could safely defy his instructions to join him on a military expedition against the Armstrongs in Liddesdale (i).

Angus's power on the border was further diminished by the fact that he had had to relinquish his authority over Liddesdale to the young Earl of Bothwell, now aged 14 and no longer subject to tutors (ii). This in itself may have had no little significance, as Bothwell had neither the power nor the experience to exercise any real authority; for Angus it was a loosening of his authority over part of the frontier area. It is clear, too, that Maxwell retained his distrust of Angus, and, like the Kers, felt sufficiently independent to be able to defy instructions issued by him (iii). The result of all this was to depreciate the efficiency of Angus's administration on the borders, and he was unable, in spite of his wish to do so, to co-operate effectively with the English frontier officials; days of truce were seldom held, and judicial raids were completely ineffective.

This gradual undermining of Angus's authority appears to have taken place over the entire country, for, when the king escaped from his custody in June 1528, his power collapsed completely. It is not without significance that Buccleuch, Bothwell and Maxwell were among the first to rally round the King, along with many others who presumably had similar reasons for disliking and distrusting the former Regent (iv). Angus resisted for a time, but was

(i) Hy.VIII, iv, 2, 2678, 4134.
(ii) ib., iv, 2, 3404.
(iii) ib., iv, 2, 4134.
(iv) ib., iv, 2, 4531.

finally forced to flee to England, largely through the efforts of Maxwell who now openly regarded him as his personal enemy (i). A new regime began in Scotland, and different factors came to condition the relationship between the frontier officials.

2. The Border Policy of James V, 1534-9.

The opening of this period found Europe in an uneasy peace. The Emperor, Charles V, troubled by the rise of Lutheranism in Germany, and by the advance of the Turks on his eastern frontier, had been forced, although in a position of military superiority, to seek peace with Francis I at Cambrai in 1529. But the general pattern of international relations remained unchanged; England and France remained allies to counteract the threat of the vast imperial power.

The natural inclination of the young king of Scotland lay towards an alliance with France, and he was accordingly further tied to England; this bond was reinforced in December 1528 by a treaty of peace with England (ii). Thus in spite of the hatred James V had for Angus and his Anglophile policy, his accession to the throne caused little change in Anglo-Scottish relations, and frontier policy was continued for a time on the principles which Angus had always advocated even when he had not been able to put them into operation - co-operation with England, and adequate internal control. Days of truce were held, internal feuds, such as that between the Kers and the Scotts, were patched up, and judicial raids were made regularly against the thieves of Liddesdale (iii). Between May 1529 and July 1530 three major raids took place,

(i) Hy.VIII, iv, 2, 4674, 4728.

(ii) Rymer, xiv, p.276.

(iii) A.D.C., pp.300-1; Hy.VIII, iv, 2, 5030; Appendix 7.

two led by the king in person; this was by no means an abnormal thing for a Scottish king to do during his majority, but it does show how important James felt these expeditions to be at this particular time. The third appeared to be the most successful. For reasons not entirely clear, all the frontier officials, including the royal favourites Maxwell and Buccleuch, were warded during the operation. Many thieves and pledges were taken, and the expedition culminated in the capture of John Armstrong of Gilnockie, a notorious thief, and in his execution, along with 36 of his followers, in circumstances regarded by borderers as treachery. For a time the border was stunned into quietness. But the natural independence of the borderers was now reinforced by an ugly resentment against the Scottish Crown; the landed nobility had been humiliated by the royal actions and the commons hated his methods of justice.

In foreign policy James V had shown an inconsistent attitude. He wished for a continued alliance with France, but he felt that this could only be secured by his own marriage with the daughter of the king; Francis was unwilling to agree to this, and his ally, Henry VIII, was not attracted by the prospect of a marriage link between the two royal houses which could possibly unite the thrones of France and Scotland, although he favoured Franco-Scottish friendship with its concomitant Anglo-Scottish rapprochement. Henry's influence on France was entirely contrary to the desires of James, who therefore felt free to flirt with an alliance with the Emperor. As early as March 1531, James, under the influence of the Archbishop of Ravenna, Cardinal-Protector of Scotland, had sought a marriage alliance with a niece of Charles V, Dorothy, daughter of the king of Denmark (1). The tension created by this and other events, such as Scottish assistance for rebels against the English government in Ireland, caused

(1) Bapst, pp.170-4.

a partial breakdown in frontier administration in 1532, followed by an outbreak of sporadic raiding and counter-raiding amounting to open warfare. This tension was relieved by a truce in October 1533 and by the fact that Francis I, fearful of a Scottish alliance with the Emperor, had finally promised his daughter Madeleine to James (1).

To sum up, the conditions governing Anglo-Scottish frontier administration at the beginning of 1534 were unstable. Europe was at peace; but war could break out at any time between Valois and Hapsburg. Henry VIII was firmly allied to France, but James V, although by nature and tradition inclined towards France, tended to vacillate in his policy: in the event of war, it was uncertain which side he would take. In England, Henry was engaged in completing his religious reformation. Potentially this could create both internal and international problems for England; but at this time the change was accepted by the English people, while on the continent the political balance between the two major powers combined with the general secular attitude of the times to create a situation in which no one was prepared to support the papacy against Henry (11). In Scotland, James V ruled with an efficiency tinged with ruthlessness which was alienating both nobility and commons.

The events of the following six years, as they affected border administration, can for convenience be divided into three contrasting sections. The first, which ended in March 1536 when war broke out between France and the Empire, was a period of vague policies and loose administration. During the war, which lasted until June 1538, and for some months afterwards, frontier

(1) Rymer, xiv, p.480; Teulet, i, p.77.
(11) of. Mackie, Tudors, pp. 335-42.

administration became co-ordinated, efficient and effective. Thereafter, during 1539, the deterioration in policy and administration set in, which ultimately led to war between the two countries.

The Scottish part in international affairs during the first period was governed by indecisive and fluctuating policy, and it is probable that there were two pressure groups at the Scottish court, one favouring a French, the other an Imperial alliance. James, having obtained the promise of the hand of Madeleine de Valois, sent ambassadors to France to insist on the immediate celebration of the marriage (1). Francis, apparently under pressure from English ambassadors in Paris, refused to countenance this, withdrew his promise and offered Marie de Bourbon to James as a wife. This sudden check turned James once more to the idea of an Imperial alliance, and in July or August 1534, he re-opened negotiations for the hand of Dorothy of Denmark. Charles V was still willing to entertain the idea of a Scottish alliance, but, in the course of his tortuous political manoeuvres, had just promised Dorothy to the brother of the Elector Palatine, whose influence he hoped to use to counter French machinations in Germany at this time. With great skill this project was concealed from the Scots until April 1535; but when the marriage took place, James, although offered other inducements by the Emperor, turned once more to France, whose agents had been active in Scotland pressing the claims of Marie de Bourbon. This alliance James was now willing to consider, and ambassadors were sent to negotiate with Francis I and Charles, Duke of Vendôme, father of the proposed bride (11); the negotiations were protracted, difficulties arising over the size of the dowry, the security offered for its

(1) Hy.VIII, vii, 209; for the full details of the marriage negotiations see Bapst.

(11) Bapst, p.243, n.2; Hy.VIII, viii, 1153-4, 1154.

payment, and the accompanying political agreement, and towards the end of October the negotiations were broken off. At this point the entire international situation was altered by the death without heirs of Francesco Sforza, Duke of Milan. Francis I immediately claimed the Duchy for his second son, and was willing to employ force to secure it. This threat of war with the Empire forced Henry VIII to interfere in the Franco-Scottish negotiations, for he could not afford to have a resentful neighbour on his Northern frontier in time of war; in his opinion, France, England and Scotland had to face Charles V together. He accordingly used his influence with Francis on behalf of his nephew, and on 6 March 1536 a marriage contract was drawn up; Francis ratified it within a month, and shortly afterwards he sent James the Order of St Michael. At the same time his forces began their invasion of Italy.

Henry VIII intervened at the crucial moment to assist the policy of James V, and in general his own policy was not unfavourable towards Scotland. During this period he was governed by two considerations. First, the necessity of maintaining his position as an ally of France to balance Imperial power in Europe; here it was in his interests to further the alliance of France and Scotland, provided that alliance was not sealed by a royal marriage, and to prevent any alignment of Scotland with the Empire. In the second place, as his religious reformation reached completion and a new power joined the ranks of Protestantism, he had to prepare for the inevitable counter-attack of the Roman Catholic powers. His policy here was to try to induce his allies to follow his example and turn against Rome; it was essentially a long term policy but it seriously preoccupied him at this time. In January 1535 he sent Lord William Howard to Edinburgh with the insignia of the Order of the Garter, a token of his goodwill which James accepted; and in October, even before the

death of Sforza forced him to ally himself closely to Scotland, Henry instigated the mission of William Barlow, Bishop of St Asaph, to Scotland, with the object of peacefully persuading James to renounce the Roman Church (i). This mission had little chance of success, for James cynically believed it better to share the wealth of the Church by alliance with it, as he had done during the foundation of his College of Justice, than by breaking with Rome as Henry had done; and also ^{he believed that} by following the Catholic policy of refusing to acknowledge the legitimacy of Henry's marriage to Anne Boleyn and therefore of her offspring Elizabeth, he would himself be regarded as the nearest heir to the English throne after Mary Tudor (ii). It is probable that the severe steps taken against Lutheranism in Scotland at this time stemmed from a fear that the events in England constituted a political danger to the Scots throne, ^{rather} /than from a fear of a religious threat to the Church in Scotland. Barlow's hints of the wealth to be gained by a spoliation of the Church naturally went unheeded; and although he returned again early in 1536 on a second mission, James rejected English religious opinions, although he was willing enough by this time to become allied to Henry (iii).

Thus, in spite of the completion of a peace treaty in April 1534 with its ratification four months later (iv), the vacillating foreign policy of James V combined with his distrust of Henry VIII to produce an uneasy situation on the borders. At the beginning of 1534 the wardenships were in the hands of the traditional warden families; George Lord Hume was in charge of the East march and Walter Ker of Cesford, a young man only recently released from his tutors, was warden on the Middle march; Robert Lord Maxwell

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- (i) Hy.VIII, viii, 69, 70, 1153; ib., ix, 527, 730.
(ii) of. Easson, Dunbar, pp.55-7; of. Inglis, Otterburn, pp.496-55.
(iii) Hy.VIII, x, 227, 286-7, 482; of. Hy.VIII S.P., v, p.14.
(iv) Rymer, xiv, p.529; Hy.VIII, vii, 1031-2.

continued to control the West march, and had also been appointed Keeper of Liddesdale (1). This made for a degree of administrative stability on the Scottish side of the frontier, as each of these men had full control of his region. Maxwell in particular had built up an immense local strength (11), and had the advantage of being close to the king, following specifically royal policies. The young Gosford had the advice and assistance of his elder and experienced relatives, Andrew Ker of Fernihurst and Mark Ker of Dolphinton; he had adequate control in East Teviotdale, and, because in 1530 Janet Ker, Fernihurst's daughter, had married Walter Scott of Buccleuch, he could probably rely on some co-operation from the Scotts in West Teviotdale. Hume, who had shown great enthusiasm in expelling Angus from his lands in the Merse, was equally secure on the East march. These officials remained in office throughout this period, except that in Liddesdale Maxwell was replaced, first in July 1534 by Bothwell, and later, in July 1535 by Malcolm Lord Fleming, another of the king's favourites. But this stability was partially weakened on the East and Middle marches. The royal policy of firm control led to the imprisonment of several borderers of importance; in February 1534, Fernihurst, Mark Ker, John Hume of Blackadder, and Alexander Hume, tutor of Wedderburn, were all placed in ward on royal instructions; in May 1535 the Earl of Bothwell, notorious for his lack of co-operation with the Crown in border affairs, was also warded; in April 1535 Walter Scott of Buccleuch was indicted at a justice ayre at Jedburgh for treasonable communication with England; and in March 1536 Mark Ker was once more in prison, apparently also for friendly attitudes towards certain Englishmen (111). In face of this personal insecurity

(1) see Appendix 3.

(11) see Chap. 1, p.18, and Chap.2, p.71.

(111) Hy.VIII, vii, 252; ib., ix, 64, 84; ib., x, 482; A.D.C., p.439.

of relatives and friends of the wardens, it seems unlikely that the government could rely on these officials in a great crisis, for it is probable that where ties of kinship and royal commands conflicted, the wardens would reject the central authority.

The action taken against these men does, however, show that James V was keenly interested in the firm control of the region. He personally led three military and judicial expeditions to the borders at this time, one to Eskdaillmure in June 1534 to hunt rebels and outlaws with Maxwell, another to Liddesdale in October of the same year, and a third, in April 1535, based on Jedburgh, where he was attended by the Justiciar, Archibald, Earl of Argyll, William Stuart, Bishop of Aberdeen, and other members of the council. It was at this third raid that Buccleuch was apprehended for illegal activities in alliance with Daore, encouraging the English to raid the territory of the Kers at Denholm and Cavers (1). The firmness of the royal actions throughout this period implied that James had complete control of his frontier policy and officials at this time, although it is clear that he was building up considerable resentment against himself.

On the English side of the frontier there was considerably less administrative stability. As in Scotland, wardens were traditionally chosen from the English border magnates, and for much the same reason - a warden had little authority if he had no private local territorial power (11). During the 15th century the Percies and the Nevilles contended for the offices, which

(1) Fraser, Scotts of Buccleuch, ii, p.184.

(11) of. Storey, Wardens, p.596.

carried with them a lucrative salary and the power to maintain private armies at the king's expense; these powerful officers were brought under control by Richard III and Henry VII, their powers being limited and their salary reduced (1). In 1534 local magnates still held the offices, Henry, Earl of Northumberland being Lieutenant and warden of the East and Middle marches, and William Lord Daere being in charge of the West march. It was at this point that Henry VIII, not trusting the loyalty of the barons on the frontier, doubtful of their efficiency as administrators, and hoping to increase his own authority by lessening feudal allegiance, began to interfere actively in border affairs. The English government felt that much of the weakness of frontier administration was caused by the excessive number of liberties, or areas of franchisal jurisdiction, which could, and did, give shelter to criminals; and by two acts of 1535 the Lords of all franchises were deprived of their criminal jurisdiction. But these measures were valueless unless the power of Daere and of Northumberland could be broken too. Northumberland was attacked through his own folly, gullibility and weakness of character; he had become involved in extensive financial liabilities, and, to free himself from the accumulated debt, the Earl, in July 1531, granted his Cumberland estates to the king. In 1536 the childless Earl made Henry sole heir to all his lands, overlooking his more resolute younger brother, Sir Thomas Percy, his natural successor, with whom he had been continuously at feud for some years; and early in 1537, probably owing to the disturbances caused by the Pilgrimage of Grace, the king took actual possession. On the West march, discord was fomented between Daere and Henry Clifford, Earl of Cumberland, a

(1) Storey, Wardens, pp.606-8.

staunch supporter of the Crown. In May 1534 Daere was accused of treason, and he was dismissed from his office of warden, Cumberland taking his place; his offences included the making of personal alliances with certain Scots, particularly Buccleuch and Maxwell, to further his personal feuds with some of his fellow countrymen (i). Although Daere was acquitted - the only noble to escape from a charge of treason during Henry's reign - he was not employed again as warden, and he was fined heavily, a serious burden on those lands he retained. The result of all this was that by the beginning of 1536 there was no real obstacle to the full establishment of royal authority on the marches (ii).

Border administration was not unaffected by this interference, as the position of the English wardens was weakened to such an extent that they became almost ineffective in maintaining internal order. Northumberland, at no time a resolute official, had been territorially weakened, and now faced increased disturbances made by his popular brother and his henchmen, disturbances which he and his deputies could not control. On the West march, Cumberland, secure in royal favour, faced a virulent feud with the impoverished Daere, whose friends and allies on both sides of the frontier had the power to nullify all the warden's operations. It also impaired the wardens' negotiating power with Scotland. In July 1535 the Scots complained that the English failed to keep days of truce, and that Northumberland's deputies were men of insufficient ability; one of them allowed a disturbance to break out at a day of truce at which a case of extreme difficulty, which appears to have been holding up redress, was being discussed (iii). In November of the same year, Musgrave, Cumberland's deputy, complained

(i) Hy.VIII, vii, 962; of. the similar Scottish charge against Buccleuch.
(ii) Reid, Council, pp.116 et seq.; Dodds, i, pp.32 et seq.; Bean, pp.151-4.
(iii) Hy.VIII, viii, 1009; A.D.C., p.442.

that he could get no co-operation from Maxwell, who was assisting English rebels who had fled to his march, many of whom doubtless were followers of Daore (1), with whom Maxwell had been on good terms. Days of truce were of little effect at this time. Only a few are reported as being successful, such as that held in November 1534 between Maxwell and Cumberland, when all bills were dealt with. Others broke up in disorder, or redress was held up for some time on technical points (11).

The result of the interaction of all these factors was that international frontier administration was far from adequate. Although James V had control of his frontier officials, his changing foreign policy, when combined with his antipathy towards Henry VIII, did not encourage him to insist on regular and frequent warden meetings. Henry VIII, although willing throughout most of the period to encourage efficient frontier diplomacy, had by his policy in the North taken from his wardens much of the authority necessary for the effective performance of their tasks.

The opening of the war between France and the Empire in March 1536, and the consequent tightening of the alliance between France, Scotland and England, began a new period in Anglo-Scottish frontier negotiations characterized by the frequency and success of international warden meetings. The international background to the following 30 months is a simple one. The war between the Valois and the Hapsburg was of short duration, ending in June 1538 by the treaty of Nice, neither side being totally victorious. England remained neutral in this struggle, although closely bound to France; relations with Scotland were on the whole good, as Scotland also became tied to France by marriage alliances. James V, eager to meet his promised bride, Marie de Bourbon,

(1) Hy.VIII, ix, 844.

(11) ib., vii, 1588; A.D.C., pp.422, 433, 435.

sailed to France in September 1536; he returned to Scotland nine months later with Madeleine, daughter of the king of France, as his wife (1). After her sudden death, James, wishing to retain the close ties with France, opened negotiations for marriage to Mary, Duchess of Longueville, daughter of the Duke of Lorraine. Scottish policy throughout this period was therefore closely influenced by France.

The attitude of James V to the borders underwent no change; he insisted on firm control, personally conducting a judicial raid based on Kelso in June 1536, just before his departure for France. There were no changes in the frontier officials, except that Maxwell was in September 1537 once more given charge of Liddesdale. The Scottish frontier was administratively stable until November 1538. This was not true of the English side of the boundary. Henry VIII's policy in the North clearly implied a total reorganisation of the warden administration, and ultimately the replacement of officials from the borders by others from outwith the borders on whom he felt he could place greater reliance. The outbreak of the Pilgrimage of Grace in October 1536 forced him to implement this policy prematurely and only partially. The centre of this revolt lay further south, but the insurgents received much practical sympathy from the English borderers who resented earlier royal interference in their own affairs. The administrative reorganisation following the crushing of the revolt, culminating in the consolidation of the Council of the North in January 1537, affected the English wardens. Northumberland and Cumberland were both forced to resign their wardenships in January 1537 on the grounds of inefficiency, and the king, not

(1) For James's change of mind and the complex negotiations following on this, see Bapst, pp.282-308.

trusting the Duke of Norfolk, his Lieutenant in the North, himself took over the title of warden; deputies were appointed to exercise the functions of the wardenship, Sir William Evers on the East march, Sir John Widdrington on the Middle march, and, in June, Sir Thomas Wharton on the West march (i). These men did have local connections; but they were not powerful members of an old nobility - they were of the 'new men' on which the Tudor monarchy relied, and they depended solely on the king for their position and authority. Stability did not immediately develop from this. The new officials had been involved in the family feuds of the region, and their effective authority was incomplete; moreover, they had to face antagonism from Norfolk, who, having acquired much of the land formerly belonging to Northumberland, thought himself the most suitable holder of the wardenships (ii). Norfolk, although responsible for the suppression of the revolt and the maintenance of order internally, had no responsibility himself for warden negotiations with Scotland.

The efficiency of the Anglo-Scottish frontier administration at this time can be shown by the following statistics. Between September 1536 and November 1538 there are recorded 61 dated days of truce. This is unlikely to be an accurate indication of the true numbers as the surviving records are not so complete for the West march (ii), and, of course, all meetings did not leave records. Of these 61 meetings only three were postponed, and one of these, postponed for bad weather, did in fact take place within ten days of the original date. At only one meeting is it definitely known that no bills

(i) Hy.VIII, xii, 1, 225, 372; ib., xii, 2, 154, 249; Dodds, ii, p.229.

(ii) Dodds, ii, pp.234-7.

(iii) Most of the information is given in two returns of warden proceedings sent to the English Privy Council by officials of the East and Middle marches (Hy.VIII, xiii, 1, 489; ib., xiii, 2, 241); there is no return for the West march.

were satisfactorily dealt with (1). At the remaining 57, redress of complaints was regularly carried out on both sides; at least 333 English and 296 Scottish complaints received satisfaction, and this does not take into account those successful meetings for which actual figures have not survived. Only in April and May 1537 was there any delay in border affairs; Henry VIII refused to allow James V, who was returning from France to Scotland, to pass through England, and this sparked off rumours of an outbreak of war between the two countries. The wardens on both sides, relying only on local information, formed the opinion that war was inevitable, and saw no reason to administer border law in a region which they believed would be ravaged shortly by military forces (11). But the general impression over the whole period is one of efficiency on both sides.

Apart from the favourable European international situation, there were two main reasons for this efficiency between September 1536 and April 1537. While James V was absent from his kingdom it was essential for the Scots regents to maintain order on the frontier in order to avoid giving any offence to the English; they feared an attack in his absence, and it was only when he was on his way home that any relaxation occurred. On the English side it is clear that a stable frontier and a firm policy was necessary during the suppression of the revolt, in order to lessen the effect of the sympathy felt by the borderers for the insurgents. Thus, although a great number of borderers on both sides were eager for war, neither government could afford to allow any disturbance to break out locally. The picture changed only slightly after James returned. Although his natural inclinations were by now strongly anti-English, he could not allow them to predominate until his alliance with France was more

(1) Ry.VIII, xiii, 1, 798.

(11) of. Dodds, 11, pp.241-56.

secure; the sudden death of his first wife Madeleine broke the ties with France and it was not until his marriage with Mary of Lorraine in June 1538 that this was achieved. It is clear that prior to this date instructions must have been given to the Scottish wardens to co-operate well with the English. In England the success of the Council of the North, the vigorous administration of Norfolk (until his return to the South in October 1537), and the efficiency of the new wardens, all combined to make the frontier machinery operate effectively.

By the end of 1538, however, new factors came into operation which led to a decline in frontier affairs. The Treaty of Nice in June 1538 ended the Franco-Spanish war, and this began to alter subtly the framework of international relations. There was a sufficient reconciliation between Francis I and Charles V to encourage Pope Paul III in December 1538 to order the execution of the Bull of excommunication drawn up three years earlier against the presumptuous heretic king of England. Although this had no immediate result in the shape of a crusade against England - for the friendship between the two great Catholic monarchs was only of short duration - the ties between England and France were loosened at a time when those between Scotland and France were becoming tighter. This allowed the natural antagonism between England and Scotland to develop, an antagonism which, for the moment, was expressed in increased religious and political tension.

The religious policy of Henry VIII, with its political overtones, had found as yet little sympathy in Scotland, and the Scots were not only willing to receive as refugees priests and others who had been forced to flee from England, but also were eager to declare their attitude by lampoons at Henry's expense. This was no new development. Scurrilous ballads and prophecies

were alleged to have originated in Scotland as early as 1535 (1), but it was not until early in 1539 that any official complaint was made about them. The English deputy wardens, Evers and Wharton, complained to James V about the books of "balettes and diffamatory railings" made by Scots against the English king, requesting him to punish the authors and prevent their distribution. James, probably with his tongue in his cheek, refused to believe them to be of Scots origin, and suggested they were made by rebels in the North of England; he did, however, order that any books of this nature found in Scotland should be burnt. Henry thanked him for his efforts, but there is no evidence to suggest that any active measures were taken against the publishers of these ballads (11).

Greater tension was caused by the growing religious differences between the countries. It was clear that James V had no intention of following his uncle's advice of breaking with the Pope in order to secure the wealth of the Church; he preferred to acquire some of that wealth by more indirect methods which retained for him the support of the competent men within the Church, men whom he felt he could trust with his affairs more than the nobility. Priests and others who had fled from England for religious reasons were welcomed in Scotland. The most notable of these was perhaps Richard Hildyard, chaplain to Bishop Tunstall of Durham, who fled to Scotland in December 1539, receiving shelter from Gavin Dunbar, the Chancellor, and from Cardinal Beaton; he received an honorary degree from St Andrews University in January 1540, and taught in St Salvator's College for three sessions. Immediately after his flight, his name was included, along with a number of friars and borderers, in an extradition list of rebels handed to the Scots by the English wardens. This was followed by

(1) Hy.VIII, xii, 2, 80.

(11) ib., xiv, 1, 176, 178, 232, 241, 275, 406.

other more particular requests for his return in exchange for a Scottish reiver. This request was rejected on the grounds that Hildyard was not a criminal like the other, and that any faults he may have committed could be examined only by a spiritual court (i). This attitude was maintained always by the Scottish Crown in these cases. The same was true of those who for their protestant opinions fled to England from Scotland; they received encouragement and help (ii). Those who were regarded as refugees for the sake of religion on one side of the frontier were regarded as political rebels on the other.

The increasing tension between the two countries was not the only cause of decreased administrative efficiency. The internal situation on the Scottish borders was far from encouraging administrative stability. In October 1538, commissioners of both kingdoms drew up a scheme to deal with difficulties involved in the administration of the debateable lands; this was followed for a short time by good administration on the West march, daily meetings being held by the wardens (iii). This was the climax of the foregoing period of good relations, but at the same time events on the East and Middle marches were originating a new administrative phase. James V, in early November, made a raid based on Jedburgh; but there is no evidence of proceedings against ordinary criminals. At the time of the ayre, Adam Otterburn and James Colville, both men of experience in frontier affairs, were in prison for technical administrative faults; their main fault may have been that they had had contacts in England with Angus, but it is possible that they were put away at this

(i) Hy.VIII, xiv, 2, 684; ib., xv, 32, 96, 131; Hy.VIII S.P., v, p.173; Baxter, Hildyard, p.2.

(ii) Hy.VIII, xiv, 1, 625.

(iii) ib., xiii, 2, 547, 777; Hamilton, 1, pp.53-4.

particular time, to prevent any interference should they disagree with a new royal frontier policy. The men who suffered at the Jedburgh justice courts were the wardens of the East and Middle marches, who both lost their offices. Cesford was replaced by his kinsman, Andrew Ker of Fernihurst, a man who, although senior in years and in experience, was of less importance and power in the March; Hume by two deputy-wardens, George Hume of Ayton and John Swinton of that Ilk, both men of considerably less influence and importance (i). Cesford received some form of a trial (ii), and the ostensible reason for dismissal was his failure to observe the terms of the General Band.

This measure appears to be part of an important sequence of events. The flight of Angus and his adherents at the beginning of the personal reign of James V, and the subsequent forfeiture of their lands, had given the Crown a strong territorial base in the East and Middle marches; Jedburghforest, and Preston and Bunkle regalities were all in the hands of royal puppets (iii). In Liddesdale, the traditional position of the Earls of Bothwell had been seriously weakened by the long minority of Patrick, 4th Earl; this had given the Crown an opportunity to interfere in the administration of the area, a policy which was continued even when he had reached his majority. In September 1539 he was finally exiled, and Liddesdale was annexed to the Crown, the other extensive Bothwell lands in the border region probably also being forfeited at the same time (iv). The West march was securely held by Maxwell, who used his authority efficiently and on behalf of the king; here no interference was necessary (v). The pardon granted to Buccleuch about this

(i) Hy.VIII, xiii, 2, 777; Appendix 3.

(ii) T.A., vii, p.106.

(iii) Appendix 2

(iv) S.P.Hy.VIII, v, p.158; A.P.S., ii, p.361.

(v) But note that the method of paying Maxwell's salary changed ca. 1538; this may be part of this administrative reorganization. See Chap. 2, Section 3, p.78.

time (i) for his earlier treasonable contacts with the English implies his willingness to use his administrative authority on behalf of the Crown in the same way as Maxwell.

When put in context with these additional facts, the replacement of the traditional wardens of the East and Middle marches by men of lesser status, if not of lesser ability, appears to be part of a royal scheme to bring frontier administration under the more direct control of the government, a scheme perhaps suggested by the policies of Henry VIII already described. Cesford and Hume did not fit in and had to be replaced by others who would; their failure to observe the General Band shows that they were unwilling to devote their power and authority entirely for the benefit of the state. The fact that a change of this magnitude could be made without causing any violent outbreak by the adherents of the dismissed officials shows how powerful the king had in fact become. The royal policy was successful, and, some years later, English officials looked back with admiration to the time when the East and Middle marches were "among the chefast peaseble cuntreys of Skotland and all by thorder of justyce" (ii).

There must, however, have been some resentment against the new officials. In England, Reynold Carnaby, the keeper of Tynedale, was captured by the men of the area over which he had been given authority, and was set free after four months only on payment of a ransom (iii). In circumstances such as these the new officials must have found it difficult to keep order internally, and thus must have affected their ability to carry out their international duties adequately. Days of truce, however, continued to be

(i) Scotts of Buccleuch, ii, p.189. The date should probably be slightly earlier than Fraser's ca. 1540.

(ii) Hamilton, ii, pp.287-8.

(iii) Hy.VIII, xiv, 1, 1303; ib., xiv, 2, 110, 131, 781 (p.315, f.97b).

held up to the outbreak of war, although they appear to have been much more irregular than in the immediately preceding years. The undertones of the administrative re-organizations on both sides of the frontier, the new European international situation and the Scottish distrust of English religious and political policy, combined to create a situation in which frontier administration was beginning to deteriorate.

3. Mary of Lorraine, 1552-7.

The war which raged between England and Scotland throughout most of the fifth decade of the 16th century made the system of frontier negotiation unnecessary, and it was not re-constituted until 1550 when peace was made between the two countries, Scotland being included in the peace treaty signed at Boulogne between France and England. During the course of the war, French influence had increased in Scotland, and much of the Scottish success against England had been due to the presence of French troops on the frontier. This French dominance of Scottish policies continued throughout the period now to be discussed.

The international situation at the beginning of 1552 was one which favoured co-operation between England and Scotland. Imperial influence in Europe was low; Charles V, in pursuing his dynastic ambitions had alienated, in addition to his arch-enemy, France, not only the German Protestant and some Catholic princes, but also the Pope and the princes of Italy. French policies controlled much of Europe. England was closely bound to France by the Boulogne treaty, for although there was resentment in England at the loss of so much territory in France, there was even more resentment against the indifference shown by the former ally, Charles V. In July 1551, the ties between England and France became even closer when a treaty was signed at

Angers; a marriage was arranged between Edward VI and a French princess, and he exchanged chivalric insignia with Henry II. England, under the control of Northumberland, was a weak state, easily dominated by Henry II, who feared that his power in Europe would be seriously reduced if England turned again to Spain for help. Northumberland, on the other hand, in charge of a Protestant state surrounded by Catholic powers, could look for help only to Henry, who although himself a Catholic, supported Protestant states in revolt against Spain; he considered Charles V, so closely related to the Catholic claimant to the English throne, a dangerous ally for the weakening Edward VI.

At the same time French control in Scotland was effective. James, Earl of Arran, was regent, but his power was curtailed by French officials acting on behalf of the Scottish government. So open was this French interference that an Imperial envoy, who had travelled through Scotland, could report to Charles V that Henri Clutin, Seigneur D'Oysel, the main representative of the French Crown in Scotland, wielded almost sovereign authority in matters of state and justice, operating through subordinate officials of his own creation (1). An example from border administration will show Arran's weakness at this time; when he held a justice ayre at Jedburgh in February 1551, he was accompanied by D'Oysel and a body of French troops (11). Arran could scarcely follow any independent Scottish policy, internal or foreign, especially as he could not rely on any English help against his French controllers; in fact, from the time that he accepted the duchy of Châtellherault in February 1549, his actual power was almost non-existent,

(1) C.S.F. (Span.), 1550-2, p.339.

(11) Lorraine Corr., p.344.

although he retained the regency.

The real power lay with the Queen Mother, Mary of Lorraine, her French officials, and those of the Scots nobility who supported her, such as Maxwell and Cassillis. It is clear, for example, that Arran was being kept in the dark throughout 1552 as far as frontier relations with England were concerned. The negotiations over the Debateable land were controlled directly by Mary through Maxwell and Cassillis, and Arran was to be made privy to the agreement only grudgingly (i). Again, on 7 October, Arran was apparently unaware of the fact that Maxwell of Terreglis had been given a commission as warden of the West march, although one would have expected him as regent to have had a major voice in such an important appointment - as, indeed, from the tone of his letter, he himself expected to have (ii). Arran was not fully in charge. He may have been in touch with Imperial agents and suspect to the French party; it is certain that he resisted French demands and, with the help of Huntly and Archbishop Hamilton of St Andrews, was striving to increase his authority (iii). But his tone was generally submissive; phrases such as "gif it may stand with your pleassour" were not those used in matters of state, even to a Queen Mother, by a regent in effective command of the affairs of his country.

Apart from the alignment of Scottish with French policies, the most important feature of the French domination of Scotland was a new accent on administration. France was an absolute monarchy, and had already travelled some considerable way towards the centralization and dependence on the royal court which characterized the reign of Louis XIV. Although accustomed in

(i) Lorraine Corr., pp.357-9.

(ii) ib., p.360; Ex.R., xviii, p.491.

(iii) C.S.P.(Span.), 1550-2, pp.507, 586n.

France to a certain degree of resistance to centralization and of independence and privilege of the nobility, Mary of Lorraine and her French administrators were appalled at the condition of Scottish administrative methods and Scottish laws "la pluspart desquelles", she wrote, "sont les plus injustices du monde, non d'elles mesmes, mais en la maniere qu'ils en usent" (i). In the same way, D'Oysel wrote of the Scots people hopefully awaiting "le traictement, la police et bonne justice que leur est tres necessaire" and which had been denied to them (ii). The minds of the French in Scotland were obsessed by the necessity for administrative re-organization; memoranda were prepared on, for example, financial and frontier administration, probably by officials favouring the dowager's policy, and strenuous efforts were made to put the existing administrative machinery to work as effectively as possible under close central supervision, and, where necessary, to evolve new methods (iii). The more important central offices, such as those of Comptroller and Vice-Chancellor, were held by Frenchmen. It is probable that Mary genuinely believed these measures necessary to promote the prosperity of the inhabitants of Scotland, and expected them to be welcomed by the majority of the people, if not by those whose privileges were being undermined. But in this the French erred; even before the change of regency in 1554, it seemed clear both to Englishmen and to Spanish agents in England, that innovations would have little hope of success as long as they depended on French control (iv).

It is now necessary to examine against this background the general situation in the borders. Internally, affairs were extremely troubled, for

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- (i) Papal Negotiations, p.426.
(ii) Vertot, iii, p.157.
(iii) For a memorandum on Exchequer practice, see N.L.S., Adv.Ms. 34.2.17, f.124; for that on frontier control, see Lorraine Corr., p.379.
(iv) C.S.P. (Span.), 1553, p.453; ib., 1554, p.40.

this was the region in which the war of the previous decade had largely been fought, and the war had left its trail of social and economic misery. Thieves were active over the entire area; "I and my servandis and freindis is daylie and hourlie opprest be theiffis and tratouris, and hes bene brynt and herit sex times" complained William Kirkpatrick of Kirkmichael to Mary of Lorraine (1). Local feuds flourished with their accompaniment of pillage and slaughter, as Kirkmichael explained, and "without your graces help it wer bettir to me and all ~~trou~~ men to be deid nor levand". These feuds disturbed the entire administration of the border country, making it difficult for the ordinary system of justice to operate. Most important in this respect was the re-opening on the Middle march of the feud between Cesford and Buccleuch.

This feud had been dormant throughout most of the latter part of the reign of James V, but it is clear that the conflict between the two families for political and social dominance of the region had re-opened during the course of the war with England. In April 1549 Walter Scott of Branxholm raised an action against Walter Ker of Cesford, John Ker of Fernihurst, and other Kers, on the grounds that they had, in the company of English troops, devastated many of his lands on several occasions during the previous year; in this way he not only accused them of illegal spoliation but also of treachery to the Crown, in as much as the Kers had, with other borderers, previously bound themselves to serve the Queen (11). The accusation was accurate. English sources confirm that in January 1548 Cesford was an active member of English expeditions against Newark, and that Cesford and Colcenknowes were offered, in return for their assistance, Buccleuch's bailiships of Melrose

(1) Lorraine Corr., pp.389-90.

(11) Fraser, Scotts of Buccleuch, ii, pp.185, 189, 193.

and Ettrickforest(1). The English were deliberately fostering the feud against Buccleuch, who, after promising to assist English invasions, had failed to do so (ii). Cesford's treason was not isolated, and many other notable Scots, perhaps resentful of increasing French influence in the country - or perhaps merely wishing to be on the side which was, for the moment, winning - were assured to the English at this time. It was certainly no bar to his holding administrative office, for in April 1550, immediately peace was made, he was re-appointed warden (iii). The feud, however, still existed, and it was clear to the government that as long as it continued no effective administration could be hoped for, and this at a time when efficiency was essential to good international relations. The government attempted to solve the problem later in the same month by dividing the march into two portions, Cesford retaining control of East Teviotdale where his influence was the greatest, and Buccleuch being made warden of the Western part "betwix Mynto Crage and Craykeorse, inquhilk boundis his freindis, servandis and tennentis duellis" (iv). In April 1551, Buccleuch was made keeper of Liddesdale, and by June Cesford had fallen so far out of favour that Buccleuch was made warden over the entire March (v). This action of the government merely increased the resentment of the Kers and the inhabitants of East Teviotdale against Buccleuch, so much so that he took the precaution of having a special proclamation read in Jedburgh commanding the people to obey him (vi). The antipathy between the two great families of Teviotdale continued throughout 1552, as did Buccleuch's litigation (vii), until on 4 October Buccleuch was murdered in the streets of Edinburgh

(1) C.Scot.P., 1, pp.60, 66.

(iii) R.P.C.S., i, p.94.

(v) ib., 11, pp.201-5.

(vii) A.D.C., p.615.

(ii) ib., 1, p.56.

(iv) Fraser, Scotts of Buccleuch, 11, p.196.

(vi) ib., 11, p.205.

by Cesford, Coldenknowes and their supporters.

It is clear that this type of disorder on the borders could not be controlled by the local officials, who were involved in it, and from the peace of 1550 onwards, the central government had taken an active interest in maintaining order there. Judicial raids were held at fairly regular intervals (i). Arran was prominent in these; but equally prominent and probably more important was the continuous presence of French troops under their commander D'Oysel. The controlling factor was the continuing good relations with England, which enabled the Scots government to concentrate on effective internal administration and lessened the possibility of international troubles arising from these local feuds. In the Spring of 1552 this favourable international situation reached its most significant point when an agreement was made to divide the so-called Debateable lands on the West march, territory over which both countries had formerly claimed sovereignty, and which had been a continuous source of frontier disturbance (ii).

The effect of this was to enable the Scottish government, the risks of war removed, to concentrate on the purely technical aspect of frontier administration in the hope of improving its efficiency by increasing central control. At the beginning of 1552 this was a good prospect, as all three wardens - Alexander, Lord Hume, Walter Scott of Buccleuch and Robert, Lord Maxwell - were close supporters of the policies of Mary of Lorraine. Throughout the Lorraine regency Hume remained warden of the East march, perhaps the most peaceful area of the frontier; the wardenship of the other two marches, however, changed hands frequently. Maxwell was replaced temporarily in March 1552 by his brother, John Maxwell of Terreglis, when he was appointed a commissioner for the division of the debateable lands; but as he died shortly

(i) see Appendix 7.

(ii) see Chap. 2, pp.63-4.

after, Terreglis remained in office until August 1553. The West march was far from peaceful at this time and the new warden had great difficulty in maintaining order, probably owing to the tension arising between the Maxwell family and the Johnstones, a tension which led to the great feud between these families later in the century. Terreglis, troubled by feud, felt that he could no longer exercise the wardenship, even with an increased salary, and resigned in favour of his uncle, James Douglas of Drumlanrig (1). Douglas, once in office, controlled the Johnstones for a time by gaining the co-operation of John Johnstone (possibly appointing him his deputy), who accepted responsibility for his own clan and for the surname of Graham (11). Thereafter Terreglis and Drumlanrig alternated in office until August 1556, without, however, really succeeding in keeping the march completely under control.

The murder of Buccleuch in October 1552 created a difficult situation for the Government. His heir was his grandson, a minor, and the vacant wardenship could not be exercised by this youth; clearly it could not be given to one of his murderers, the only other local alternative (111). Teviotdale became a power vacuum. Hume temporarily acted as warden in December 1552, but the government determined to fill the vacancy from outside the borders. In January 1553 David Hamilton of Preston, a supporter of Arran and an efficient central administrator, undertook the office. This set the pattern for central control of the march; until January 1557, when Hume once more took over, the office was exercised by men who had no connection with the locality and who were responsible only to the central power. Hamilton, perhaps suspect through his

(1) R.P.C.S., i, pp.143-6.

(11) S.R.O., Society of Antiquaries' Coll., Inv., p.9; Fraser, Annandale, 1, p.25.

(111) After a judicial raid to Jedburgh, the Kers had quickly submitted to the central authority, and were banished to France to fight for the French king (R.P.C.S., i, p.133); it is not clear whether they did in fact join the Scottish army in France.

relationship to Arran, was replaced on the fall of the Regent by John, Lord Hay of Yester, who, five months later, gave place in turn to Andrew Johnstone of Elphinston; Johnston acted efficiently until James Lord Fleming took his place in October 1556. A similar policy may have been tried for a short time on the West march, as Fleming was also appointed to that march, replacing Patrick, Earl of Bothwell, who had died after a few days in office; but by May 1557 the policy had been abandoned and Terreglis once more held the wardenship.

These continually changing wardenships must be seen as part of a deliberate policy. The government required men who were efficient and who could be controlled; if a man such as Terreglis could not operate efficiently owing to local feuds, he was replaced by someone who could, and if the loyalty of a man such as Hamilton was suspect when his benefactor was removed from the government, he was similarly removed from his office. The government was concerned primarily with administrative efficiency, not with balancing the traditional patterns of power within the localities, although these patterns had to be taken into account. This concern affected all aspects of frontier administration at this time.

The most unusual feature was a new interest taken by the government in the wardens and their subordinates. The magnitude and difficulty of their office was recognised to some extent, particularly on the West march, and here a substantially increased salary was offered in 1553 both to Terreglis and Drumlanrig (1). This was not done on the other marches. But on the Middle march the warden clerk received a salary regularly from 1553, perhaps because his superior was not a local man; the same clerk appears to have

(1) R.P.C.S., 1, pp.143, 147.

remained in office throughout the frequent changes in the wardenship (i).

To this was added a rigid control of the wardens' activities. Officials were sent from the council to supervise wardens and days of truce; Carnegie of Kinnaird, a Senator of the College of Justice was sent on several occasions in 1564 to oversee the wardens of the Middle march (ii). When councillors could not go to the borders, the wardens were summoned to the council; in 1564 Terreglis and Elphinstone were both hastily summoned to Edinburgh on separate occasions to give an account of their activities in the past, and a declaration of their future policy, after complaints had been made to the Regent by the English wardens (iii). At the same time each warden was encouraged to seek council guidance for any particular difficulties in which he found himself. As early as 1552 Buccleuch had sought advice from the council on certain matters of controversy which had arisen between him and the English warden; and this habit was continued by Hamilton of Preston the following year when direct instructions were given to him on specific points of procedure (iv). While this control might undermine the wardens' independence of action, it certainly increased their apparent efficiency; to gain this end, the government accepted responsibility to England for the wardens' actions, and insisted on their performance at all points even if abnormal government interference in the marches was necessary. For example between 1552 and 1555, the government gave direct commands to the inhabitants of the marches to attend days of truce in support of the wardens (v), took steps to control the movements of those who had been found guilty at days of truce (vi).

(i) T.A., x, pp.172, 230. (ii) R.P.C.S., xiv, pp.131, 141.
(iii) ib., xiv, pp.136, 147, 151. (iv) ib., i, pp.123-4, 138.
(v) T.A., x, pp.149, 169, 181, 226, 288.
(vi) ib., x, pp.149-50, 176, 180.

and accepted responsibility for those innocent men who had been sent to England as pledges for the payment of redress, even to the extent of taking legal action against those actually responsible for the offences (i). The government even circumvented the wardens by communicating directly with men of the locality about official matters relating to days of truce (ii). This all seriously lessened the status of the wardens, and this was noticed by the English wardens, who began to make their complaints even on trivial matters directly to the Regent and council. Correspondence on these matters passed between the Scottish government and the English wardens, rather than between the wardens (iii).

The increased control over the wardens' international activities was paralleled by increased central interference in the internal affairs of the frontier region. Attempts were made to control the feuds which were constantly breaking out; in 1554 the government was seriously occupied with this problem, and representatives of the Kers and the Scotts, and of the Kers and the Rutherfords, were forced to give assurance to each other (iv). Most important, however, was the regular use of judicial raids supported by effective military power. Raids were held regularly throughout the years 1552 to 1555, mainly to the middle and west marches where the tension between various feuding families was creating a high degree of disturbance. Both the military and the judicial aspects were emphasised. The organizers of the raids included important members of the council and the legal profession, such as John Bellenden of Auchnoul. The nucleus of the military forces from 1551

(i) T.A., x, pp.196, 231; A.D.C., p.636.

(ii) Newbattle Mss., ix, 23.

(iii) R.P.C.S., xiv, pp.122-51 (passim).

(iv) ib., i, pp.152-3.

onwards was formed by the French troops who were acting more or less continually on the frontier at this time. But they could not provide the total forces necessary for a raid owing to their small numbers; Mary of Lorraine asserted "*estre le nombre si petit qu'en en mestant d'un costé'il fault desgarnir l'autre*" (i). Accordingly the normal levies of the lieges continued to be employed, with increased emphasis on their efficiency. Those summoned were expected to attend, and heavy amercements were levied against those who failed to serve (ii); whether or not these sanctions were effective in producing a large force, this administrative improvement did make sure that those who evaded their duty at least contributed towards the cost of the operation.

The effectiveness of these raids is, however, difficult to judge. That of 1551 did succeed in obtaining signatures to the General Band, and it is probable that later raids employed this method of control also. On the other hand, there was considerable resentment on the frontier at the employment of French troops; some were killed by ordinary borderers in May 1555 during the course of a raid, and it was found necessary, public opinion being so antagonistic towards the French, for Parliament to threaten penalties for those who spoke slanders against them (iii). In these circumstances more tension may have been created by the French military arm during these expeditions than good was done by the justice courts. But it is clear that some order was taken with the border clans; pledges were taken in in 1553, 1554 and 1555, and probably on other occasions too, and measures were taken to ensure

(i) *Papal Negotiations*, p.426.
(ii) *T.A.*, x, pp.259-61, 292, 299, 301. See Chap. 5, pp.302-4.
(iii) *T.A.*, x, pp.273-9; *A.P.S.*, ii, p.500.

that they were held as securely as possible (i). In some instances the judicial proceedings seem to have lasted longer than on former occasions.

The most important factor in frontier administration was still the provision of an adequately peaceful background within which it could operate. Co-operation between England and Scotland was a feature of much of this period, and commissioners of both countries met at the frontier to discuss points of extreme difficulty, and to increase the efficiency of the frontier negotiating machinery. After the successful division of the Debateable lands of the West march in September 1552, commissioners met in 1553, 1556 and 1557. The most significant meeting was that of December 1553, when Carnegie of Kinnaird and Bellenden of Auchnoul met two English commissioners to reform frontier disorders and to discuss the maintenance of quietness and good rule. The result of their deliberations was "the first real code of Border Laws for peace time" (ii). This was largely a codification of customary law; the offences - from murder and fireraising to hunting and fishing - which the subjects of one country could commit in the other were closely defined, and the procedure to be followed, with the punishment, was laid down. The traditional methods of recovery of stolen goods by "following the tread" were described, and completely new regulations, such as the severe punishment for those who received and assisted fugitive rebels, were evolved. Perhaps most important of all, certain forms of misconduct at days of truce were defined, and measures taken to control them. The commission of 1556, led for the Scots by the French commander D'Oysel, met at Berwick and busied itself in making ordinances, some of them clarifying and improving those made three years earlier. But the main duty of the commissioners on this occasion was to try to diminish

(i) T.A., x, pp.180, 231, 275; Fraser, Wemyss, iii, pp.9-10.

(ii) Tough, p.98; for the text, see Leg. Mar., pp.99-118; see also Tough's detailed discussion of the clauses, pp.100-11.

the number of unredressed bills. A further meeting in July 1557 had the same object, but, although various points were discussed, it is not clear how effective it was, relations between the two countries having deteriorated considerably by this time (i).

The emphasis on administrative action by the Scottish central government led at this time to a completely new development - direct negotiation on border affairs between the countries not by wardens nor commissioners but through ambassadors. The Scots, at no time had an ambassador resident in England, but for a few years they made use of the resident French ambassador in London, Antoine de Noailles, for most of their official communications with the English government. De Noailles, and, later, his brother Francois, who succeeded him as ambassador in 1556, was charged by Henry II to give full attention to the affairs of Scotland. In June 1553, shortly after taking up his appointment, he was dealing with "aulcunes choses du faict d'Escoce", and in January 1555 he reported to the Constable of France that "les affaires d'Escoesses ne me donnent rien moins de peine que font les autres de sa majesté" (ii). He made reports regularly to Scotland, either to Mary of Lorraine herself, or to D'Oysel. These reports covered many subjects; he described the general international situation on the continent in detail, political changes in England and the developing trends of English policy in general, and particular events which affected Scotland, thus giving the Scottish government all necessary information to enable it to decide its policy in Europe and towards Europe (iii). Mary and D'Oysel at the same time sent him reports of affairs in Scotland for his information. The weight of Scottish business did in fact seem very heavy to the French ambassadors in London, and

(i) R.P.C.S., xiv, pp.296-8.

(ii) Vertot, ii, p.40; ib., iv, p.112.

(iii) ib., ii, iii and iv (passim).

they complained of the time and energy they were compelled to devote to them (i).

Among all this diplomatic activity frontier affairs played an important part. In September 1553, a list of specific complaints against the English was transmitted to him, mainly relating to regular breaches of the frontier, and he was asked to suggest the appointment of commissioners. De Noailles on this occasion did not press the individual cases himself, and replied to Mary of Lorraine that the new Queen of England, Mary Tudor, was favourably disposed; the commission was in fact held two months later, and he reported its activities to France (ii). In May 1555, D'Oysel ordered him to complain again of English inroads into Scotland, and the next month he reported his proceedings with the English Council for reparations, which was followed by the appointment of the Earl of Shrewsbury as Lieutenant of the English marches. Other complaints were made through De Noailles at this time, but he himself tended to regard the frontier problem as insoluble "car les habitants de ces deux frontieres sont si chastouilleux" (iii). The ambassador clearly tried hard to negotiate on behalf of the Scots, and he did achieve something, although he was balanced awkwardly between the specific desires of the Scots and the, at this time, more moderate policy of his French master. The important point to notice, however, is not the success with which he negotiated, but the fact that he did negotiate; in the same way Nicholas Wotton, the English ambassador in Paris, was negotiating on frontier affairs on behalf of the English (iv). This was the beginning of a tendency to conduct some frontier negotiations at a higher diplomatic level.

(i) Harbison, p.304. (ii) ^{Vertot}~~ib.~~, ii, pp.209, 343; R.P.C.S., i, pp.148-50.
(iii) Vertot, iv, p.315; ^{ib.}~~ib.~~, v, p.7.
(iv) C.S.P.(For.), 1553-8, pp.17-18.

The ambassadors were mainly involved in negotiations of greater general consequence. The firm alliance between France and England could last only as long as the young Edward VI and his regent Northumberland remained in control of England. The illness and subsequent death of Edward was a severe blow to French policy, and the French actively assisted Northumberland in his attempt to place Lady Jane Grey on the throne. The failure of this episode (in which D'Oysel appears to have played some part), and the succession of Mary Tudor, was a serious diplomatic reverse, and De Noailles found himself in a difficult position; nominally France was still allied to England, but owing to increased Spanish influence, there was considerable tension between the two states. Charles V seized the opportunity to break the stalemate which had developed in his war with France, and pressed forward with plans for a marriage alliance with the new Queen. When Philip married Mary in July 1554 England became almost as subordinate to Spanish interests as Scotland was subordinate to French interests. Accordingly the tensions on the Anglo-Scottish frontier depended almost entirely on the state of the relations between France and Spain.

England was one of the centres of the diplomatic conflict between the Valois and the Hapsburg monarchies; there their two ambassadors, De Noailles and Simon Renard, fought with words for superiority (1). Both ambassadors tended to be more bellicose than their masters during this period, De Noailles in particular being eager to stir up trouble in England, even to the extent of causing open war between England and France. He was friendly with D'Oysel, and thus had direct links with Scotland which he could exploit in his diplomacy;

(1) For the details of this diplomatic duel, see E. Harris Harbison, Rival Ambassadors at the Court of Queen Mary.

for example, early in 1554, when he and D'Cysel were implicated in Wyatt's revolt, they suggested to the English rebels that they would arrange for Scottish frontier disturbances to coincide with their insurrection (i).

The policy of the French Government was cautious, and did not encourage these activities; but it was at the same time suspicious, and the Duke of Guise, even before the Anglo-Spanish marriage took place, warned Mary of Lorraine to strengthen her frontiers while the general situation remained quiet (ii). Against this uneasy background the Queen Regent was able to develop her border administration, and although there were several frontier incidents involving borderers on both sides which could have created tension, the system of frontier negotiation appears to have worked sufficiently well to prevent serious trouble between the states.

By the end of 1554 it was clear that both France and Spain sought peace, and this was gradually achieved through the mediation of English officials, Cardinal Pole and Bishop Gardiner. The negotiations were prolonged, and the French took the opportunity of reinforcing their troops on the Scottish frontier; but, although tension rose and fell between the peace-makers, local administrative methods apparently continued to be adequate to deal with frontier disturbances. The appointment of Shrewsbury in July 1555 as Lieutenant of the English marches did for a time increase tension as it coincided with a break in the Franco-Spanish negotiations; days of truce were at a standstill throughout August owing to Shrewsbury's refusal to deal with important cases involving murder and arson. This deadlock was partly administrative, partly the result of suddenly increased international tension; when

(i) C.S.P. (Span.), 1554, p.124.
(ii) Balcarres, p.221.

the tension began to drop, the administrative difficulty was solved by the appointment in October of commissioners to deal with the problem (i).

The truce between France and Spain signed at Vaucelles in February 1556 was a temporary cessation of hostilities; it did not alter significantly the tension in Europe. Its effect in Scotland was more serious, as Henry II, believing the English danger to have been eliminated, withdrew in June 1556 for service in Italy the French troops who had patrolled the frontier. This impaired border administration. The English Grahams increased their raiding activities, perhaps encouraged by the English government; for when border commissioners met to deal with this problem, D'Oysel complained that the English representatives negotiated "avecques toute la subtilité et dissimulation qui se pourra imaginer pour l'avantage de leurs," (ii). Even when some agreement was reached the Scots felt the English were failing to put it into effect - "cest toute collusion de leur costé" (iii). There was great tension but no open warfare between the two states; this tension was probably reflected in the normal meetings between the local officials, but lack of the relevant records prevents any examination in detail of the process - during 1555 and 1556 only one day of truce has left a definite trace, although this was a period of considerable frontier activity (iv). It is certain that the division of the Debateable lands had not been a complete success; the Grahams used this territory as a base for their raiding activities, and, as the Queen Regent was not slow to point out, "si on ne faict les habitans de la diote terre obeissans, la division seroit de nul effect" (v).

Nor is it clear how effectively the Scottish administration was

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- (i) Vertot, v, pp.90-7, 156.
 - (ii) Harbison, p.304; Teulet, i, p.284.
 - (iii) Papal Negotiations, p.425.
 - (iv) Scottish records are almost entirely lacking, English ones extremely scarce.
 - (v) Vertot, v, p.94.

operating internally. There was certainly considerable resistance throughout Scotland to the French style administrative systems which Mary of Lorraine was developing; as early as May 1555 D'Oysel's enthusiastic hopes for the reception among the Scots of new judicial methods had been dashed owing to the selfish attitude of the nobility "voullant chascun regner sur les petits et exercer la tyrannie" (1). This resistance was strong on the borders where, as has been noticed, it took the form of active resentment against French troops. Some of the Scots borderers were in league with the English and encouraged them to make disturbances on the frontier. D'Oysel even believed that important nobles such as Cassillis, who openly supported the government, tacitly supported such rebel activities (ii). The West march in particular was a major trouble spot; it was most frequently troubled and spoiled by English incursions, and the inhabitants were continually at feud among themselves and in revolt against authority (iii).

The rejection by the borderers of the Regent's authority was part of a more widespread resistance to the Scottish government. It was due to many causes - the administrative innovations, the French officials who antagonized all by their overbearing attitudes, and the growth of Protestant feeling which resented the domination of Catholic policies among the Government advisers. The result of all this was that when the uneasy alliance between France and England did begin to break down, the Scottish government was unable to assist France by any action against England; in January 1557 the Scottish nobility, as it had done almost 35 years previously with Albany, refused to raid their neighbour's territory. Mary of Lorraine was forced to keep peace with England; even after England and France were openly at war,

(1) Vertot, iv, p.317. (ii) ib., iv, pp.315-18.
(iii) ib., v, p.91; Teulet, i, p.293.

the Scots were willing to meet English border commissioners to discuss redress.

Throughout this entire period of fluctuating international tensions, Anglo-Scottish frontier administration appears to have continued. Under Mary of Lorraine, Scottish administration became highly organized, but owing to the resistance which developed, it was to a large extent ineffective, particularly towards the end of this period.

4. Morton, 1573-80.

The opposition to the administrative and religious policy of Mary of Lorraine reached its head in the revolt of the Lords of the Congregation, which, with the help of English arms, succeeded in altering completely Scotland's position in Europe. The French were removed from the Scottish government, the long standing alliance with France was broken, and a Protestant form of religion was established. As Scotland no longer had any direct links with any European power, the general international situation on the continent was now of much less importance in Scottish affairs, although the Catholic powers might tend to meddle with the object of restoring the Old Religion. The dominance of Protestantism, and the fact that it had been established with English help, ensured that government policy in general was more favourably orientated towards England, even if tension between the two states was never completely removed owing to suspicion on both sides. Administratively, the Scottish government was forced to depend for personnel entirely on native lay sources. The short period of foreign control was at an end, but so also was the time when the Government could call on the services of the talented administrators of the Catholic hierarchy to fill key administrative positions; the New Church was, by its very nature, unwilling to co-operate, and the government was forced to build up a corps of Scots lay

administrators, a civil service on which it could rely. Men of this character had held important government positions from the beginning of the century; but now their usefulness was extended, and a tradition of loyal Government service was built up which was the real foundation of what has been described as the Stuart Despotism.

All this, of course, was not immediately apparent in 1560; some of it became obvious only in 1573, the rest much later in the century. Neither Protestantism nor the English connection was irrevocably established, and the fact that Mary was Queen, a Catholic with strong links with France, implied to contemporaries that both might easily be reversed. Mary, however, before certain faults in her own character turned her reign into a romantic tragedy, tended to follow the advice of her half-brother, James, later Earl of Moray, and of Meitland of Lethington, both Protestants who favoured friendship with England. Part of Mary's motive in this undoubtedly was her hope of securing recognition as heir to the English throne, and as long as this hope remained, relations with England were good. On the borders, this resulted in the beginning of that vigorous policy of Moray - ruthless internal control allied with efficient local transfrontier negotiation - which he later followed as regent. There was no innovation; he merely put into effect the administrative principles and practice which had been evolved by earlier kings and regents, but with a vigour they had been unable to apply and a success they had been unable to achieve.

Mary's marriage to Darnley, her affair with Bothwell, and the birth of James VI created political chaos in Scotland which culminated in the outbreak of civil war between the adherents of the Queen and those of her son. The Earls of Moray, Lennox and Mar, all died in the course of the struggle as Regents for the young James, and in 1572 James, Earl of Morton took over the

leadership of this group. The English Queen gave the King's party some moral support, and, in 1570, during the course of manoeuvres partly connected with the suppression of the Northern Earls, an English army crossed the frontier on a 'defensive' mission in his support. But this was done tentatively and grudgingly, for Elizabeth, knowing of the support of the Guise party in France for the Marian party in Scotland, feared lest she antagonize the French to more active intervention in Scotland. England was at this time carefully friendly towards the French government, which had adopted a policy of toleration towards Protestantism; but the encroachment of France on the maritime ports of the Netherlands, an economic menace to England, and the sudden reversal of French religious policy, weakened the link. By January 1573 Elizabeth felt it was necessary to crush the Marian party in Scotland completely, and in May English artillery forced the Marian garrison of Edinburgh castle to submit (i). The new regent Morton was securely established, and all hope of the immediate restoration of Mary and the Catholic religion was lost, as the French, troubled at home by Huguenot disturbances, were unable to intervene. This direct action on the part of England eliminated for that country the danger arising from a Catholic Scotland, and removed for a time a situation in which Scotland might have been a pawn in European politics generally.

The European situation in 1573 was tranquil in the sense that no major wars disturbed the peace. The struggle between the Hapsburg and Valois monarchs had been postponed as both had to deal with turbulent Protestant elements within their realms - the Huguenots in France, and the Dutch in

(i) Read, Walsingham, ii, pp.121-9.

the Spanish Netherlands. Diplomatic intrigue continued, but this scarcely affected Scottish interests to the extent it had done earlier in the century. English policy was watchful; realizing that a solution of the religious problem on the continent favourable to the Catholic monarchs would be detrimental to her own interests, Elizabeth followed a foreign policy of balancing France against Spain while secretly encouraging the Protestant rebellions in both states. All this meant that the new Scottish government was free to build up its own power, and that Anglo-Scottish relations could develop in a friendly manner.

In Scotland, Morton did not celebrate his victory in a vindictive way. With the exception of Lethington, who died before the death sentence could be carried out, and of Kirkcaldy of Grange, who was actually executed, Morton tended to treat his former enemies leniently. With some of them he had reached agreement even before Edinburgh castle fell, and the fact that a man had been a supporter of the Marian party was not necessarily a bar to his later advancement; as early as 1574 Morton recommended for an English pension Lord Herries (formerly Maxwell of Terreglis), a strong supporter of the Queen in former days, but whose counsel as a borderer Morton now held in great estimation (1). Men who were unwilling to compromise with the Regent, such as Thomas Ker of Fernihurst, left the country. This lenient attitude of Morton's was part of his major policy of restoring order throughout the country which had been devastated by civil war.

This was particularly necessary on the borders; local feuds had become embittered by allegiances to the greater political feud, while the lack

(1) C.Scot.P., v, p.2.

of any effective form of administration for the previous four years had resulted in an outbreak of turbulence by the border thieves, who carried on their raiding activities in Scotland and England virtually unchecked. In February 1572 William, Lord Ruthven, had led a force to Jedburgh, where a band was signed and pledges taken from the borderers, but this probably had as much a political as an administrative motive (1). It was not until August 1573, by which time Morton felt sufficiently secure, that he took active measures to restore order. A raid, planned in June and initially intended for July, took place then, and a large muster was summoned to meet at Peebles and Jedburgh. Measures were taken to prevent any assistance being given to the thieves, and co-operation was received from England; Teviotdale was largely brought under control, the General Band being signed by many at Jedburgh and a large number of pledges being taken from the thieves. This was followed in November by another justice ayre to Jedburgh, which lasted almost a month (11).

While this vigorous internal policy was being prosecuted, Morton made provision for international administration by appointing new wardens. This was not necessary on the Middle march where William Ker of Gosford, the representative of the traditional warden family in that march, had been a member of the Regent's party in the civil war and had exercised the warden's office there to the best of his ability since 1570. On the East and West marches no wardens existed, Lord Hume and Lord Herries having followed the opposite faction. On 6 November 1573, James Hume of Coldenknows, a keen

(1) R.P.C.S., 11, pp.117-19.

(11) ib., 11, pp.242-4, 246, 252, 259-60, 274-6, 548-9, 610; Diurnal, pp. 336-8.

follower of the King's party although a close relative of Lord Hume, was appointed warden of the East march, presumably because he could combine with unsuspect loyalty some at least of Hume's power in the region. John, 8th Lord Maxwell, took over on the same date what he regarded as his hereditary position as warden on the West march; the office, which had been held almost continually by his family at the beginning of the century, had been filled by others during his minority. Liddesdale, the seat of most of the frontier turbulence, required a firm hand to control it; Morton entrusted the Keepership to his young kinsman, John Carmichael, who had shown considerable military prowess during the civil war.

Having established a degree of order in this way, Morton's policy thereafter was to keep efficient administration in operation. His methods were not new; he used those which had been used by Moray, and by other Regents and sovereigns throughout the century. But, although he did not use them with the ruthless vigour of Moray, he could, in the favourable international situation, use them with greater continuous effect than some of the pre-Reformation rulers. The whole system used by Morton showed continuous interest and activity by the Privy Council.

The most spectacular method of control and in many ways the most effective was the judicial raid. As has already been suggested (1), these raids could be efficient only if carried out regularly and in a judicially disinterested manner; this period is one of those in which this was done. After the initial settlement of 1573, Morton organised raids with great regularity. There was one to Tweeddale in 1574, two, based on Jedburgh and

(1) see Chap. 5, section 3, p.326.

Dumfries respectively, in 1575, and one based on Jedburgh in 1576; two more were based on Dumfries in 1577, another was proposed, but apparently abandoned, at Dumfries in 1578, and two took place at Jedburgh and Dumfries late in 1580, just before Morton's fall from power (i). These were nearly all held in the late autumn, taking advantage of the full moon to destroy the ingathered harvest. The military and judicial parts of the raids appear always to have been dovetailed neatly together, and both were effective. The fact that the justices succeeded in taking "grit soumes of money" from the thieves or from their landlords is as much evidence of their efficiency as of Morton's avarice, an avarice forced on him by the increasing costs of government caused by the decreasing value of money at this time.

Essential to the efficiency of the judicial raids were the methods of controlling the leaders of the border communities. Morton fully realized this, and he made continuous use of the General Band and the taking of pledges, in close conjunction with the raids. For example, the band signed at Jedburgh in August 1573 was closely examined by the Privy Council when the raid of November 1576 was being planned, being entered, along with the band of March 1551, in the council books at that time (ii); this presumably was in order to make a survey of the obligations entered into by the Teviotdale landowners and of those who had broken their band. In much the same way Ruthven summoned twenty-two borderers before the council in January 1579 to face charges of having broken, as sureties, some of their obligations under the band (iii). Only by such firm control over those who had signed the band could the obligations undertaken be made in any way effective, and the

(i) see Appendix 7.
(iii) ib., iii, pp.63-8.

(ii) R.P.C.S., ii, pp.548-52.

judicial aspects of a raid have any hope of success.

Pledges were closely associated with raids for the same reason. When the raid of November 1580 was being planned, the custodians of some pledges were summoned to produce the men for whom they were responsible; these were then placed under direct central control in Edinburgh in order that measures could more easily be taken against them if any crimes committed by those for whom they were pledges came to light at the judicial proceedings about to begin (i). This also appears to have happened when other raids were being planned, but the evidence relates rather to the fact that the pledges had been allowed to escape than to their renewed imprisonment by the government. The escape of Pledges from those charged with their custody was the major problem facing Morton in this aspect of border control. He attempted to solve it by ordering pledges to be securely kept while in official hands, by insisting that the private custodians find considerable surety, generally £2000, that the pledge should be produced when required, and by seeing that either the money or the pledge was in fact produced (ii). The council ordered the monetary penalty to be rigorously enforced on several occasions (iii), and at least once, in 1577, managed to force the return of the pledge by a series of legal proceedings (iv). It is clear that Morton's methods were capable of having some effect.

This legal activity which accompanied the keeping of pledges was reflected in other aspects of central control of the frontier. Attempts were made to control the feuds existing among various families and this came to

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- (i) R.P.C.S., iii, pp.321-2, 328.
(ii) For details of this policy, see Chap.5, section 2b., pp.263-4.
(iii) e.g. R.P.C.S., ii, pp.477-8, 525-6; ib., iii, pp.41-3, 59, 63.
(iv) ib., ii, pp.626, 632-3, 736.

involve legal proceedings. After being dormant for over a decade, the feud between the Scotts and the Kers broke out briefly in 1577; but the government acted with great rapidity, forcing Gosford to fulfil certain clauses in the contract drawn up in 1564 between the families, the breaking of which was alleged by the Scotts to be the reason for the renewal of the feud (i). On the West march, the feud between Maxwell and Johnstone had not yet developed the virulence which was to characterize it in the next decade; accordingly government measures at this time involved families of lesser importance. The Hattlies and the Burnfields, the Trotters, the Redpaths and the Dicksons on the East march, the Hoppringles and the Elliots, the Turnbells of Minto and the Turnbells of Bedrule, the Kers and the Rutherfords on the Middle march, the Armstrongs and the Johnstones on the West march, all signed bands of assurance to keep the peace (ii). The breaking of these bands involved individual members of these families in legal proceedings in which heavy financial penalties were extorted from them (iii).

In addition to law cases relating to the general band, pledges and feuds, the central courts dealt with many others involving the effective control of the frontier region. Many of these concerned the obligations undertaken by certain individuals to present criminals for justice (iv); others concerned horse and cattle stealing, illegal entry into and possession of property, and unlawful uplifting of rents (v). Civil cases regarding the disputed ownership of land were also dealt with; these were serious matters, as such disputes were one of the causes of feuds, and in settling these cases at the source the

(i) R.P.C.S., 11, pp.643-4, 665.

(ii) ib., 11, pp.322-3, 422-3, 453-4, 544, 610-11, 684-5; ib., 111, p.302; H.Mss.C.R., xv, 9, p.29.

(iii) R.P.C.S., 11, pp.534-7, 591-2.

(iv) ib., 11, pp.279, 306, 364.

(v) ib., 11, p.359; ib., 111, pp.39, 101.

government was carefully limiting the possibility of future trouble (i). To these law cases of purely internal importance must be added others of international significance, concerning aspects of the wardens' administration. Some arose between various borderers concerning the responsibility of paying redress money; for example, Robert Fraser sued John Edmonston in 1575 to recover money he had paid out to satisfy a bill (ii). Others affected the wardens themselves; William Ker of Cesford was involved in considerable litigation with members of the Davidson family, who alleged they had been wrongfully fyled at a day of truce (iii), and Maxwell was accused by Johnstone of finding one of his servants guilty of an English bill without reason (iv). Sometimes the wardens were the pursuers, seeking the support of a legal decision in their administrative activities; Cesford, for example, took legal proceedings against certain men who had refused to make redress of stolen goods (v). All these cases appear to have been dealt with strictly according to the rules of law, even where a government official was involved.

Some of these legal decisions were clearly of assistance to the wardens, but this was not the only way in which they were given help. Their authority was reinforced by orders and proclamations insisting that they be obeyed at all times (vi); they were authorized to take over castles within their march (vii); and some attempt was made when the wardenship changed hands to ensure that the new warden should have full access to all the relevant papers in the possession of the former warden (viii). Their salary was regularly paid, and in Liddesdale and on the West march military support for

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| (i) R.P.C.S., 11, pp.501, 522. | (ii) <u>ib.</u> , 11, pp.445-6. |
| (iii) see Chap.4, p.219. | (iv) R.P.C.S., 11, p.593. |
| (v) <u>ib.</u> , 111, p.236. | (vi) <u>ib.</u> , 11, pp.357-8, 678-9. |
| (vii) <u>ib.</u> , 11, p.615. | (viii) <u>ib.</u> , 11, p.613; <u>ib.</u> , 111, p.297. |

the frontier officials was a regular charge on the Treasurer from 1574 (i). At the same time a certain degree of supervision was exercised over them; Hume of Wedderburn was summoned to a council meeting in 1580 to which he was to bring all his official papers (ii). But there is no evidence during this period of direct supervision by councillors sent to the marches.

From all this it is clear that throughout Morton's period of power one of his main concerns was adequate internal control of the frontier region, and it appears that on the whole his administration was both successful and equitable. In the prevailing international conditions one would expect this to be paralleled by fruitful frontier negotiations, but there is little evidence of this. Between 1573 and 1580 the dates and places of only 12 days of truce have been recorded, although passing mention of other meetings suggests that there may have been a greater degree of regularity than this figure would indicate. Only two border commissions were arranged, one in 1575 to settle the differences caused by the Reidswyre raid, the other in 1580 to deal with outstanding cases for redress. This may argue that the ordinary machinery was operating sufficiently well during this period to make the exceptional machinery of the commission almost unnecessary. On the other hand frontier business was discussed by the English ambassadors resident in Edinburgh, who were in constant communication both with the English government and the English wardens; in 1579 Captain Errington, by personal contact with English and Scottish wardens, succeeded in arranging for days of truce to be held again after a stoppage (iii). It was more simple for the man on the spot to deal with sudden outbreaks of frontier trouble as they arose than for the cumbrous machinery of the international commission to be frequently

(i) T.A.Mss., 1574-6, 1576-9, 1579-80, passim.

(ii) H.Mss.C.R., Milne Home, p.50.

(iii) C.Scot.P., v, pp.364, 369-74.

invoked. It is therefore not completely clear how effective international frontier control was during this period, but the evidence would appear to suggest that on the whole it proceeded adequately, although there were periods when days of truce were held up owing to technical difficulties. It is certain that the machinery did not work with the same vigour as it did, for example, during the years 1536-7.

One of the reasons for this was the fact that, although the international situation was so good that there was no prospect of war between England and Scotland, tension did develop between Elizabeth and Morton. Morton was naturally inclined to friendliness with England owing to the religious and political ties which had developed out of the civil war. He felt, indeed, that these ties should be further strengthened by a definite defensive league between the two states, and that Elizabeth should be willing, as the French had been willing earlier, to subsidise the government and some of the more reliable nobles and administrators with pensions. This was the basic idea behind his policy during 1573 and 1574, and one which he never lost sight of (i). Elizabeth was immoveably opposed to both aspects of this. She was ^{not} willing to join a particular Protestant League with Scotland lest this should incite the Catholic powers; she refused to distribute the pensions on the ground that Scotland was being peacefully governed and that there were no extraordinary administrative expenses. Moreover she suggested that, as Scotland, and Morton, owed their present position to English intervention, he should be content (ii). This was probably an erroneous reading of the situation; it was unlikely that either Spain or France would be active against England at this point, and Elizabeth seems to have closed her eyes to the continuous

(i) C.Scot.P., iv, pp.592-8, 638-9.

(ii) Read, Walsingham, ii, p.141.

pressure of rising prices on the cost of administration. Both Burghley and Walsingham were keen advocates of a firm defensive alliance with Scotland, but were unable to persuade their Queen of the soundness of their policy. In spite of the policies of Morton and the two English statesmen, Scotland was not reduced to the position of a satellite state during this period, owing to the resolute refusal of Elizabeth to see the necessity for it (1).

By May 1574 Morton was less favourably inclined towards England because of the continuing rebuff to his overtures. The English ambassador Killigrew noted the machinations of a French party, and that the Regent was inclined to treat the Marian party too leniently; so uncomfortable was he that he requested his recall unless he was given instructions to discuss an alliance with adequate pensions (ii). In spite of various diplomatic moves, no real change in this situation took place until July 1575, when, at a day of truce held at Redeswyre, an altercation broke out between Carmichael and Foster, the English warden, which resulted in bloodshed and the capture of the English officials. This affair appears to have been completely accidental, although some Englishmen tended to blame their own warden; it does not reflect the tension between Morton and Elizabeth, as it is clear from testimonials given to Carmichael by English officials that prior to this date Scottish frontier administration had been most effective (iii). The detention of the English warden, however, aroused the Queen, and diplomatic relations were strained for a time; but Morton, by adopting a strictly legal attitude and by waiting until the Queen's anger had been calmed down, carefully avoided any open break. The

(1) One cannot completely accept Lee's picture of 'satellite diplomacy' during this period; see Lee, Fall of Morton, p.111.

(ii) C.Scot.P., iv, p.679; ib., v, p.6.

(iii) C.S.P.(For.), 1575-7, 218, 309.

English prisoners were sent home laden with presents, commissioners met and agreed on the form of redress, and Carmichael, temporarily replaced in Liddesdale by Angus, was sent to England to a temporary imprisonment in York, where he appears to have made a favourable impression on Huntingdon, the English Lieutenant, and, through him, on Elizabeth herself (i). No lasting tension resulted from this frontier incident, but neither was there any alteration in the existing situation; the rapidity and ease with which Morton had mollified Elizabeth produced neither league nor pensions, and this continued for two more years.

On the border the Redeswyre incident resulted in a temporary outbreak of lawlessness which Morton was forced to put down by a large scale raid to Dumfries in November 1575, in the course of which many pledges were taken. It was at this point that Morton began to evolve his system for the effective detention of pledges. But in spite of this enforcement of law and order, the Scottish government found it difficult to ensure that the redress, promised by their Commissioners for Redeswyre and other lesser incidents, was paid. By late February 1576 the bills were sworn and arrangements made for payment or for the return of the stolen property; but it is clear that as late as the following November much still remained to be redressed (ii). This was probably no fault of Carmichael's, who continued his efficient administration in Liddesdale supported by a mercenary band of horsemen (iii); but his very efficiency had aroused the antagonism both of the other wardens - particularly Gosford - and of the borderers, who resented the fact that he was a man who had no territorial or social link with the region he administered (iv), and he probably received little support in his administration. At the same time

(i) NLS., Ms. 3657, f.43. (ii) R.P.C.S., ii, pp.498, 568.
(iii) T.A.Mss., 1574-6, 1576-9, passim.
(iv) C.S.P.(For.), 1575-7, p.107.

mutual recriminations at the diplomatic level did not help. Morton accused the English borderers of placing too high a value on the stolen goods and of refusing to accept the return of the actual goods in order to receive an excessive monetary recompense; the English retorted that the value of Scottish bills had been similarly oversworn (1). The Scottish difficulty was therefore caused by a mixture of internal dissension with diplomatic tension.

By August further developments had occurred. To defeat the non-co-operation another large scale raid to Jedburgh was planned, partly, at least, with the object of making redress effective; but the diplomatic tension was maintained by complaints to the English government about the conduct of the English warden, Foster (11). It seems probable that Foster had allowed his personal friendship with the rebel Fernihurst to colour his administration. Foster and Fernihurst had acted together in controlling part of the borders during the civil war, and, in 1573, when Fernihurst's party had been defeated, Foster received Fernihurst and his family into his own house before they made their way to France. Thereafter he appears to have succoured friends of Fernihurst, supporters of the Queen, who had fled to England as political refugees; when the return of these men had been demanded by the Scottish wardens, Foster had refused to give them up, and had in fact encouraged them to make raids into Scotland. It was probably this fact which led to the hard words which began the disturbance at Redeswyre; and it certainly created bad blood between Foster and Cesford, who was at feud with Fernihurst. Morton accordingly demanded Foster's removal from office. Foster's activities, if all this was true, were certainly counter to the prevailing sentiments in

(1) C.Scot.R, v, pp.216-17.

(11) ib., v, p.221.

London; but the English ignored Morton's complaint and Foster retained his office (i).

Morton's policy at this time combined energetic internal administration with deliberate attempts to create a degree of international tension, possibly with the idea of blackmailing Elizabeth into accepting his proposals for a league. The latter idea failed, but his internal administration was more successful. The raid which took place in November was extremely effective. Measures were taken to ensure that the Redeswyre redress was collected, and justice courts were held at Jedburgh for 24 days, followed by military activities under Angus (ii). During this raid Morton took the opportunity to reorganise border administration. Angus was re-appointed Lieutenant over all three marches, while on the Middle march William Douglas of Bonjedburgh, a kinsman of the Regent, was appointed to act as warden "beweste the Strete" (i.e. the Roman road, Dere Street). In addition, measures were taken to ensure that the wardens were adequately accompanied at days of truce, and they, along with the sheriffs and other local officials, were given extraordinary judicial powers to enable them to deal summarily with apprehended criminals (iii).

These administrative changes can clearly be justified by the unsatisfactory nature of border control in the previous twelve months; but the real reason for the new appointments is probably to be found in the general situation within Scotland at this time. It has been suggested that as early as autumn 1575 a party antagonistic to Morton was beginning to come together, a party not favouring Mary, but accepting the existing political situation

(1) It is significant, however, that in 1586-7 the English government found it necessary, without prompting from Scotland, to investigate Foster's conduct on two occasions, and he was for a time deprived of the wardenship (Tough, p.280).

(ii) R.P.C.S., ii, p.568.

(iii) ib., ii, pp.569-73.

except for Morton's control of the government; the principal figures were the Earls of Atholl and Argyll, and to them were gradually added Ruthven, Lindsay and many others (i). By the end of 1576 a considerable amount of antagonism to Morton had developed, and some of this had shown itself on the borders in the unwillingness of landlords and others to co-operate with Carmichael. The new appointments of December 1576 were therefore an attempt by Morton to ensure that frontier administration was as far as possible in the hands of men loyal to him personally; and when in May 1577 Maxwell resigned the wardenship of the West march and was replaced by Angus, more than half the frontier region was administered by men who were close kinsmen of the Regent. When one considers the extraordinary powers which had been given to these men, it is clear that Morton had found it necessary to set up machinery to enable him to rule by arbitrary power.

The efficiency of Carmichael might have augured well for the new system, for it is certain that both Angus and Bonjedburgh brought to their task the same eagerness for efficiency and good relations with England. Yet this new organization produced a marked deterioration in frontier negotiation. The animosity which Gosford had held towards Carmichael was increased when half his march was removed from his care and given to Bonjedburgh, a man of little local consequence although a kinsman of Morton. From January 1577 Gosford began a policy of non-co-operation: he refused to answer English bills relating to his march, he refused to send any Scottish bills to the English wardens, he would make no arrangements for days of truce, and he remained in Edinburgh, absent from his march, for some considerable time, perhaps engaged in lawsuits (ii). There is no clear evidence that on the East march Coldenknows failed to carry out his

(i) Read, Walsingham, ii, p.142.

(ii) Fraser, Douglas, iv, pp.208-9, 218.

duties adequately, but it is certain that he resented Morton's actions, for later he openly took the side of the opposition faction. Angus was therefore faced with an extremely difficult situation, and his relations with the English officials was affected; his correspondence with them at this time shows regular frontier negotiation being delayed by petty matters affecting the East and Middle marches (i). But internal administrative action in the form of raids continued, Dumfries being the centre for courts in July and November.

The growth of a party in opposition to Morton was not the result of any outside interference in Scottish affairs; it arose from Morton's own unpopularity - his episcopal policy antagonized Presbyterian elements in the Church, debasement of the coinage and price fluctuations annoyed the burgesses, and the efficiency of his government, which did not rely on the nobility, alienated the aristocracy. The development of this opposition changed the diplomatic situation for Elizabeth, as it became clear to her that French agents were active in Scotland, taking advantage of Morton's weakness (ii). At the beginning of September Robert Bowes was sent to Scotland to divert the opposition; he was also to assure Morton of English support, and to give him, and others, the definite promise of a pension (iii). Elizabeth had in fact come round at last to the policy preferred by Walsingham and Burghley. Bowes reported that the situation was serious, but it was not until February that Randolph was sent to join him, authorized to offer pensions and to open negotiations for the defensive league that Morton had long hoped for (iv).

(i) Fraser, Douglas, iv, pp.214-30.

(ii) Bowes Corr., p.3; C.S.P.(For.), 1577-8, p.153.

(iii) C.S.P.(For.), 1577-8, pp.144-6.

(iv) Read, Walsingham, ii, pp.143-5. This move was forced on Elizabeth by a defeat of the Dutch forces by the Spanish army.

This was too late; within a few days the opposition had forced the resignation of Morton from the regency, and, with him, the removal of Angus, Garmichael and Bonjedburgh from their frontier offices (i). It is significant that the opposition included Herries, Maxwell, Cesford and other borderers (ii). Cesford recovered control over the remainder of the Middle march, Maxwell was restored to the West march, and Lord Ruthven was appointed Lieutenant; Morton's family system was overthrown.

Morton's fall from power was temporary, and by June he had again taken over control of the government, not now as Regent, but as a principal minister of the Crown. As the result of a treaty of Accommodation arranged by Bowes, members of the opposition group were brought into the new Privy Council, and Morton's power was curbed to a certain extent; but he was still the most important member of the government and his main thought was for the security and good administration of the borders. He could not easily reimpose the system which had operated throughout 1577. Maxwell was too powerful to be removed from the wardenship on the West march, and Ruthven, as Lieutenant, was willing to co-operate efficiently in maintaining order. On the East march Coldenknows was removed from office; he had been a personal friend of Morton, and had proved an able administrator, but his opposition to Morton had developed into a personal quarrel (iii). He was replaced by another Hume, George Hume of Wedderburn, a young man as yet, but later to achieve administrative prominence. Cesford was retained in office on the Middle march, although his animosity towards Morton had not decreased. It was,

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- (i) O.Scot.P., v, pp.276-7.
(ii) ib., v, pp.296-6.
(iii) Moysie, p.17.

in fact, impossible to replace him. To have put Carmichael into his office would have created considerable disorder, and, in any case, he was required for his old task in Liddesdale, to which he was re-appointed in November. There was no other local magnate to which the wardenship could be entrusted; Fernihurst was not suitable and was still in exile, Buccleuch was still in his early teens, and no other baron in the march had power to sustain the office against the hostility of Cesford. Morton was forced to carry out his border policy hindered by the fact that two of his frontier officials, Maxwell and Cesford, were antagonistic towards him. This was partially the reason for the failure of a raid planned for November 1578. It was to be on a large scale involving simultaneous musters of the lieges at Jedburgh and Dumfries, with additional mercenary forces financed by a special taxation; but the musters were prorogued, the taxation was declared unconstitutional, and the entire operation abandoned.

The failure of this raid showed Morton that his position on the borders required some strengthening, and in January 1579 a further reorganization took place. The council spent several days discussing the administration of the borders, in the course of which the pledge system was examined, Ruthven handed in his resignation, and Maxwell wrangled with Herries over the obligations of the Warden on the West march (1). Maxwell tended to regard the office and its perquisites as his by hereditary right, and resented any criticism directed against his conduct. Herries, an old man by now, with some 30 years' experience of border affairs behind him, made several important suggestions, including one that the warden should be assisted by a council of local barons which was to include members of the Johnstone family at feud with

(1) R.P.C.S., iii, pp.63-87.

Maxwell. Most of Herries's discourse was accepted by the Council, which thereupon appointed him warden, to the great chagrin of Maxwell who for some time refused to transfer Lochmaben castle to the new warden. This change, however, greatly improved Morton's administrative power, for Herries, although politically opposed to Morton, was a competent administrator and one who did not generally allow his personal feelings to interfere with his administration. But he was an old man, approaching 70, and not really suited to the active office, and on 24 August 1579 he was replaced by John Johnstone, Maxwell's implacable foe, on whom Morton could probably depend for loyal service.

Morton had received little help from England in March 1578, and he succeeded in restoring himself to power without English interference; this, coupled with the failure of his plans for a defensive league, did not decrease the tension which had developed between him and the English queen. Furthermore, Elizabeth was the more unwilling to help him consolidate his position, particularly as the opposing party members were also professing friendship towards England. The defeat of the Dutch by Spanish forces had forced Elizabeth to follow a pro-French policy in the hope of encouraging France, for the moment at peace with the Huguenots, to interfere in the Netherlands. This she did by renewing her marriage proposals to the Duc d'Alencon, the younger brother of Henri III (1). Because of this Anglo-French rapprochement, Elizabeth could not support Morton against an opposition which was partially financed with French money; and, when Esme Stuart D'Aubigny arrived from France in September 1579 to congratulate his cousin, the young king, on his assumption of government, she left Morton to face this intruder alone, being

(1) see Lee, Fall of Morton, pp.112-17.

forced, although suspicious, to regard d'Aubigny as an ally.

The tension between Morton and Elizabeth, and the lack of any clear English policy towards Scotland caused a further deterioration in frontier control. Although Herries and Scrope co-operated for a time on the West march in combined operations against thieves and in giving redress, on the other marches and in Liddesdale days of truce were not held; the system of redress failed to function over a technical dispute on the fying of certain cases (i). This technical difficulty could probably have been solved easily by the appointment of commissioners, as Elizabeth suggested; but behind it lay other problems impossible to solve - the inexperience of Wedderburn (who had been told to rely on his more experienced deputies), the animosity of Cesford towards Morton and Carmichael, and the unwillingness, apparently for personal reasons, of Foster and Hunsdon, the English wardens, to co-operate in any way with the Scottish government under Morton. No commission was appointed, and the difficulty was overcome in December 1579 by the activity of the English agent in Edinburgh, Captain Errington, who, by personal contact with the people concerned, succeeded in setting the machinery of redress in motion again (ii). This solution could only be temporary, and in April arrangements were made for commissioners to meet; on the postponement of this meeting, another was arranged for August, but although the English representatives waited at Berwick, the Scots did not arrive and no meeting took place (iii).

During the second period of Morton's administration international frontier control was by no means adequate, and it is in fact surprising that no major disturbances took place. Internal control on the Scottish side of the

(i) C.Scot.F., v, pp.334-5, 341-3.

(ii) *ib.*, v, pp.368-70, 372-4.

(iii) *ib.*, v, pp.396, 405-6, 417, 437-9.

boundary was little more efficient, and, in spite of the reorganisation of 1579, the administration of the marches was far from effective. Cessford was continually involved in local feuds, and his personal dislike of Carmichael hindered efficiency; at one time the English agent thought that Carmichael would be forced to resign his keepership owing to this antagonism, and Carmichael himself volunteered to leave Scotland in order to serve Elizabeth in Ireland with a band of mercenaries (1). On the West march the appointment of Johnstone opened up the feud between him and Maxwell to such an extent that administration became almost impossible. By October 1580 it is clear that Morton's organization had failed completely; no raids against the thieves had taken place for two years, and no lieutenant with general responsibility for the entire region had been appointed. Angus was offered the task, but refused to accept it, although willing to use his influence to compound some of the feuds on the Middle march; Argyll, an opponent of Morton, did now accept the office, and in November made arrangements for an expedition to Dumfries which was later postponed (11). The only attempts to impose order in the region were made by Carmichael and Johnstone, who, involved as they were in local feuds, were unable to achieve any permanent success.

The failure of Morton's administration was caused partly by events in Scotland, and partly by Elizabeth's continental policy which prevented her from giving any support to Morton or his faction. Morton's unwarranted attack on the Hamilton family weakened his hold on the government; and, as d'Aubigny's influence increased, Morton gradually withdrew from public affairs, many of his friends resigning their administrative positions or, changing their allegiance,

(1) C.Scot.P., v, pp.356, 373.

(11) ib., v, p.512.

joining d'Aubigny, now Earl of Lennox. Even Angus, on whom he had formerly relied so much, was for a time at variance with Morton (i). Men such as Hume and Fernihurst, who had been prominent supporters of Queen Mary, were allowed to return to Scotland against Morton's will (ii); and men such as Lord Claud Hamilton, who had been forced by Morton to flee from Scotland, were openly harboured in England, presumably with Elizabeth's knowledge (iii). Morton had lost his internal power, and could no longer rely on English friendship; accordingly when he was accused in December 1580 of being involved in the murder of Darnley, the king's father, he had neither local support nor foreign contact sufficient to enable him to recover his position. At home he could rely only on the Douglas and Erskine families, with a few other lords and perhaps a few ministers and burgesses; abroad, he had no support. Elizabeth was irresolute, troubled by conflicting reports of the situation in Scotland, and unwilling because of her French alliance - necessary to her in view of the sudden supremacy of Spain in Portugal, the Netherlands and Ireland - to interfere too openly on Morton's behalf. Finally, the discovery that the English ambassador, Randolph, was involved in a plot against Lennox forced the English to withdraw completely from Scottish politics (iv).

The fall of Morton produced a complete change in the personnel of the Scottish wardens; Wedderburn and Johnstone were removed from office, being replaced by Alexander Lord Hume and Maxwell respectively, while Carmichael was forced to flee, the administration of Liddesdale being added to that of the Middle march under Gosford. All the wardens were therefore friendly towards the new government, but this did not make for good frontier control. The new

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- (i) Lee, Fall of Morton, pp.120-1; C.Scot.P., v, p.432.
(ii) C.Scot.P., v, pp.341, 385.
(iii) ib., v, pp.347-8.
(iv) Lee, Fall of Morton, pp.123-9.

appointments created local feuds which increased disturbance; Hume was at variance with Manderston and Coldenknows, Cesford with the recently returned Fernihurst and others within his march, while in the West, the Maxwell-Johnstone feud still raged (i). Cesford found it difficult to control his increased area of jurisdiction and was given a force of 200 men to help him (ii); apart from this, the Scottish government made little attempt to maintain order, and no judicial expeditions were made to the borders for almost two years. The diplomatic situation did not assist regular negotiations for redress, and the wardens on both sides tended to wrangle on small points of technical detail, such as the place where they should meet, and no redress was made (iii). A situation of cold warfare had developed.

This decline is to be attributed to the fact that the new Scottish government had little interest in maintaining good relations with England; it was pro-French in character, and, in spite of the friendship between England and France, it was more interested in creating tension on the borders than in diminishing it. The administrative machine which Morton had built up for the borders during the first part of his administration was therefore allowed to fall into decay.

5. The Administration of James VI, 1587-98.

Border administration under the rule of Arran, who had succeeded Morton as the dominant person in the Scots government, was far from efficient. No real attempt was made to maintain order internally, while days of truce were few and irregular, and no adequate system of redress operated. At one

(i) C.B.P., 1, 111. (ii) ib., 1, 99. (iii) ib., 1, 106.

of these days of truce, however, the sequence of events began which led to the overthrow of Arran and the real beginning of personal rule by James VI. Thomas Ker of Fernihurst, warden on the Middle march and a creature of Arran's, was involved in the accidental murder of an English noble, Lord Russell, at a border meeting; the affair was magnified by the English government until the young king was forced to imprison Arran and Fernihurst, and to accept the return of those Protestant and pro-English Scots who had been in exile since the fall of Morton (1).

This led to the development of a new administration in Scotland based on the abilities of John Maitland; he had been appointed to the Privy Council and to the office of Secretary during the dominance of Arran, but had never completely accepted Arran or his policies (11). Although he had supported the Marian faction in his youth in company with his brother William Maitland of Lethington, he was not a Catholic, nor was he enthusiastic over a pro-French or a pro-Spanish foreign policy; even before the fall of Arran he had come to support an English alliance. Through his abilities he had become indispensable to the Crown, and with little difficulty retained his position and increased his power. Maitland was not of one of the noble families from which government leaders had formerly been recruited; although men of lesser social status had achieved responsible administrative positions, none had achieved his eminence as Chancellor. He depended entirely on the favour of the king for his position, and his policy was accordingly to enhance the power of the king at all points. The two main rivals to the Crown were the nobility, with their important semi-private jurisdictions and their tradition of independence and revolt, and the new Reformed Church, with its political philosophy of

(1) For details see Dickinson, Russell.

(11) For the full career of Maitland, see Lee, Maitland, passim.

the dominance of the State by the Church (i). Maitland's domestic policy was to limit the power of the aristocracy, and to control the Church; he made no attempt to crush the Church, as Arran had done, as he saw the possibility of using it as an ally to undermine the power of the nobility (ii). Fundamentally this was a policy of administrative efficiency, but, as it was bound to arouse aristocratic antagonism, Maitland also found himself involved in bitter political quarrels. The basic political situation was the feud between the Hamiltons and the Stewarts; Lord John Hamilton, who was the nearest heir to the throne should James VI die childless (iii), was opposed by Ludovic, Duke of Lennox, head of the most important non-royal branch of the Stewart family, who resented the possibility of the Crown leaving the family. On the whole, Maitland, who had married Janet Fleming, the niece of John Lord Hamilton, in 1583, tended to link with the Hamilton faction where this did not run counter to his basic policy.

Affairs outside Scotland were at this time extremely complex. In France the religious wars between the Catholic League and the Huguenot Henry of Navarre were still being waged; Spain was continuing her attempt to crush the Protestant rebels in the Netherlands. England had aroused the enmity of the Catholic powers and was in grave danger from the threat of Spanish invasion; at the same time there was an internal danger in the person of Mary Queen of Scots who was regarded by many as the lawful Queen of England. The details of the fluctuations of continental policies do not here concern us; although James VI, with or without his Chancellor's knowledge, was to

(i) of. Nobbs, pp.25-6, 43-4. (ii) Lee, Maitland, pp.17-18.

(iii) Lord John Hamilton was the senior representative of the Hamiltons, his elder brother having been declared insane. He was a great-grandson of Mary Stewart, sister of James III.

dabble continually in European affairs until his succession to the English throne, his continental policies never seriously affected his relations with England, and it was these relations that mattered in frontier negotiations (i). Maitland himself was apparently uninterested in continental affairs, and was only interested in Anglo-Scottish affairs inasmuch as they affected his domestic policy. He realized the importance of peace with England to the Scottish government, and he was encouraged in this by the king, who was concerned to have his right of succession to the English throne recognized. Accordingly the negotiations in which he had been engaged with England at the time of the fall of Arran were continued, and were eventually successful in 1586, although Maitland was not completely satisfied with the terms received (ii).

Friendship with England had been achieved, but it was almost immediately tested by two major crises, the execution of Mary, Queen of Scots, and the Spanish Armada. The acquiescence of James in the execution of his mother was a matter of political necessity - emotion could not enter into it, for he had scarcely seen her since his birth and could have no memories of her. Any positive action he might take would be useless; he was unlikely to receive any help from France or Spain if he made war on Elizabeth, and he did not have the resources to wage war successfully alone. On the other hand, acquiescence meant English support for the Crown in Scotland, and a virtual guarantee of the succession. Accordingly, although there was much tension between the two countries, there was no open break (iii). The threat of the Armada put Elizabeth in the position of actively seeking Scottish friendship. In this she was helped by intrigues in Scotland directed against the Crown by a Catholic faction;

(i) see Stafford, passim.
(iii) ib., pp.100-11.

(ii) Lee, Maitland, pp.93-7.

the Crown was forced to crush this group, and Maxwell, on the borders, was captured and imprisoned with English help. But Scotland did not openly support England against Spain; the most Elizabeth could achieve was the neutrality of the State on her northern frontier (i).

The Anglo-Scottish alliance, with its 'testing' by these two crises, is the dominant feature of the last fifteen years of the frontier. It was clear from 1588 onwards that James, hopeful of the succession, favoured a degree of amity with England, but was by no means subservient to Elizabeth in formulating his policies. An important feature was the pension he received from her at irregular intervals - a total of £58,000 between 1586 and 1603 (ii); but more important was the effect Anglo-Scottish friendship had on Scottish domestic government. English interference in Scottish affairs, which formerly had taken the form of support for a faction of the nobility, now consisted of support for the Scottish Crown. This in turn meant that the Crown could rely to some extent on the support of the Kirk, which, to begin with, favoured a pro-English policy. Maitland was therefore in a position to begin his policy of undermining the power of the aristocracy, and of increasing the efficiency of the central administrative machinery.

The combination of good English relations with increased government interest in efficiency affected frontier administration considerably. The tension which developed after the execution of Mary was most serious on the borders, where Francis Stewart, Earl of Bothwell, the Keeper of Liddesdale, who was resentful of the slur cast upon his family, encouraged frontier disturbances (iii). On the other hand, the Scottish Government clearly wished

(i) Stafford, pp.23-6. (ii) *ib.*, p.293.
(iii) C.B.P., i, 499, 522, 535, 570-1. Francis Stewart's mother was Jean Hepburn, Sister of James, Earl of Bothwell, husband of Mary, Queen of Scots. Mary was his godmother and he was named after her first husband, Francis II of France.

to keep the frontier under control; the other frontier officials acted fairly efficiently, and during 1587 and 1588 some days of truce were held with a degree of success (i). Between April 1587 and June 1588, four major judicial raids were held; two of these were directed specifically against Maxwell and his Catholic adherents on the West march, but other sources of disorder were brought under control at the same time (ii). The most important feature of frontier administration at this time was the willingness and partial ability of the central government to keep it under control.

This is shown by the Parliamentary legislation of July 1587 (iii). A special court was to be set up in Edinburgh to deal with border cases; landlords were to find caution and surety to answer for their men, and their obligations under the General Band were to be more regularly controlled; chieftains of clans were to enter pledges, and regulations were laid down for their satisfactory detention; justice ayres were to be held; and registers were to be made in which border affairs could be recorded. With the exception of the provision for the special court, and perhaps that for the registration in official books, there was little that was of an innovatory nature; the importance of the act was that it gave parliamentary sanction to the administrative system which had developed throughout the 16th century, and that it implied Maitland's determination to make use of that same system to the full. The act itself had no direct effect on the frontier situation, and the executive had no powers of action which it did not formerly possess; it merely initiated, with its surveys of landlords and clan chiefs and its provision for registers, a quantity of bureaucratic paper-work which has led

(i) C.B.P., i, 499, 507, 514, 529, 531; C.Scot.P., ix, pp.333, 537.

(ii) see Appendix 7.

(iii) A.P.S., iii, pp.461-7.

some to see in it the origin of some aspects of a system which in its essentials had existed for a considerable time.

The determination to control the frontier shown by this act was reinforced by the meeting of English and Scottish commissioners held in January 1588. Their purpose was to organize redress for former frontier offences and to establish good order for the future. This was done with considerable efficiency; eighty important bills on each side were fyled, apparently including some outstanding since 1540, other bills of lesser importance were remitted to the ordinary wardens, pledges were exchanged and arrangements were made for the delivery of the redress (i). The fact that on this occasion the commissioners themselves fyled bills created a new situation (ii); the wardens had been superseded to some extent, and the government itself accepted responsibility for the delivery of redress. Immediately the commission had completed its work, the Scottish council organized a judicial raid to Jedburgh, led by the king and Maitland in person, during which justice was done in internal cases and redress was given to England; this was followed up in June with a raid to the West march during which courts were held at Dumfries, and Maxwell, the cause of much border disturbance, was captured (iii). This energetic policy produced some results, but two years later the Government was still concerned with producing the redress promised by the commissioners (iv); frontier administration had improved under Maitland's central control, but it was not yet as effective as the Government wished it to be at this time.

(i) C.B.P., 1, 587, 594, 596; C.Scot.P., ix, pp.534, 537. The words "sence Haldenrigg" are interpreted by Tough (p.123) to refer to an affray there in 1540.

(ii) see Chap.4, section 4, pp.237-9. (iii) see Appendix 7.

(iv) R.P.C.S., iv, pp.792-4, 802.

By 1589 there was a considerable degree of stability not only on the frontier but within Scotland as a whole. Maitland's administration was effective and, although some of the aristocracy, notably Bothwell, either disliked him personally or realized the danger to them hidden in his policy, there was as yet little open resentment against the Chancellor. On the borders the main factor creating disturbance was the feud between Bothwell and Hume, Keeper of Liddesdale and Warden of the East march respectively. But the other officials actively supported the policies of Maitland's government. William Ker of Gosford, warden on the Middle march, was allied to the Chancellor by marriage, his son, Robert, having married Margaret Maitland, daughter of Lethington, in 1587. On the West march John Carmichael was warden, having been appointed in September 1588, partly owing to his record of frontier administration under Morton, and partly owing to the fact that, being the grandson of Janet Maitland, the Chancellor's aunt, he had continually supported Maitland's policies.

The degree of general stability throughout Scotland made it safe for James to leave Scotland for Scandinavia in late 1589, along with his Chancellor and other administrative officials, to marry Anne of Denmark. Careful arrangements were made, probably by Maitland, to ensure that the government of the country would function properly in their absence. Lennox was put in charge of the Privy Council, assisted by Bothwell, and those officials who remained behind were ordered to attend the Council regularly. The Council, however, had no control over the Borders, which were entrusted to Lord John Hamilton; he had a special council to assist him of eminent borderers (1). Bothwell, as Keeper

(1) R.F.C.S., iv, pp.422-30.

of Liddesdale, was a member of this group too, but he had become temporarily reconciled to Hume, and clearly had little intention of causing trouble on the borders; he had been extremely reluctant to accept responsibility for Liddesdale, and by the terms of his reconciliation with Hume, had in fact been forbidden to leave Lothian during the King's absence (i). Hamilton's effective council consisted of the Earl of Glencairn, Lord Boyd and Lord Herries, with the other frontier officials - Hume, Cesford and Maxwell, this last, in Carmichael's absence, being in charge of the West march (ii). Maxwell clearly had reformed after his Catholic plottings and escapades two years before, and he had probably been given this responsibility through Maitland's influence, as he was a cousin of Maitland's wife. As Hume, being the cousin of Robert Ker, Maitland's nephew by marriage, was allied with the Chancellor, the majority of the group responsible for border affairs, Hamilton, Hume, Cesford and Maxwell, had close bonds with Maitland and it is clear that he was determined to keep the frontier under the supervision of a family group of those who agreed with his policies. In the King's absence, therefore, the Stewart family had control of the main machinery of government while the Hamilton faction controlled the frontier and its hinterland; this was probably a balance of power carefully thought out to prevent discord between the two factions.

The absence of the King and so many of his officials lasted for six months, and during this period Scotland remained quiet. This was due partly to the above administrative arrangements, and partly to the fact that those liable to cause trouble had, in the absence of the King and Maitland, no target against which to direct their malevolence (iii). This quiet extended to

(i) R.P.C.S., iv, pp.423, 432.

(ii) ib., iv, p.426.

(iii) of. Maitland's letter to Bowes (C.Scot.P., x, p.267).

the Borders. Relations with England remained good, and the English Government gave Hamilton's border council considerable assistance; the English wardens were ordered to suspend all bills for past disorders and to claim redress only for present offences until the King's return, while Elizabeth assured the Scots that English forces would be available to crush any border revolt against the government (i). There was no unusual pressure from England during the absence. Within the Scottish border region there was a similar degree of quietness. Tension no doubt existed between families at feud. For example, the feud which had developed between Fernihurst and Buccleuch a few weeks before the King's departure was unlikely to have blown over completely, and in the West Maxwell appears to have taken the opportunity of using some of his new-found power against the Johnstones (ii). But the Government put all parties at feud under assurance, and there was no outbreak of violence (iii).

In these circumstances the difficulties facing Hamilton in his administration were reduced. His main concern was the maintenance of order internally. On 1 December, at Peebles, he held a meeting of his council and other interested borderers, and, although many were absent because of the stormy weather, he was able to discuss his policy and gain acquiescence to it. Provisions were made for further control of feuds, arrangements were made to hold justice courts early in January, and the procedure to be followed at these courts was outlined (iv). Further justice courts were held at Peebles in February and at Jedburgh in April. The suspension of the English bills of

(i) C.Scot.P., x, pp.197, 207.

(ii) ib., x, p.122; R.P.C.S., iv, pp.442-3.

(iii) ib., iv, p.826; ib., x, pp.207, 270, 436-7, 845.

(iv) ib., iv, pp.826-7; C.Scot.P., x, pp.207, 270, 436-7, 845.

complaint eased international negotiations; no days of truce appear to have been held until February 1590, but in March and April, by which time recent bills had mounted up, there were fairly regular and effective meetings (i). The main cause of difficulty was the disorder in Liddesdale, where Bothwell, as he had feared, was unable to keep control; other frontier problems were settled directly by the English ambassador through the Privy Council (ii). Hamilton himself was an energetic administrator, riding to Peebles, Jedburgh and Dumfries in the course of his duties; and it is perhaps significant that Gosford and Carmichael, who had played such an important part in frontier administration, were, along with Buccleuch, knighted at the wedding celebrations on the return of the King.

Successful administration during the absence proved the efficacy of Maitland's arrangements, and on the return he once more took control himself. At this point he was at the peak of his power. His administrative policies to strengthen the royal power had proved successful: the Crown was in a strong position and the country was peaceful: the Church was in general well disposed to the State: friendship with England had continued and had been of no small assistance to him in his success. Two years later these achievements had been reversed. This was the result of political forces, partly initiated by the very success of Maitland's policies.

These policies, as they affected the Borders between 1590 and 1592 were, as has already been emphasised, not innovatory to any large extent. They were based on the traditional methods evolved earlier, but these methods were used with a much greater impact and in a much more favourable international

(i) C.B.P., i, 661, 663-4, 668.

(ii) ib., i, 657; C.Scot.P., x, pp.253, 270.

climate. The borderers themselves were not more peaceful than they had been in the past. From the numbers of bills brought against each other by the wardens it is clear that the inhabitants of both sides of the frontier had not slackened their international raiding habits (i). Internal disorder still consisted of thieving expeditions and feuds, which caused much local tension. Feuds mostly affected the Middle and West marches at this time. On the Middle march, that between the Scotts and the Kers continued, but apparently did not produce any excessive violence; the split between the Cesford Kers and the Fernihurst Kers, however, became more serious, especially as the Rutherfords joined in with Fernihurst. In September 1590, Cesford obtained an order from the Privy Council that the warden of the Middle march should, by virtue of his office, be appointed provost of Jedburgh annually, and he made arrangements for himself to be so elected; this affected the interests of the Rutherfords of Hunthill, who believed they had a more or less hereditary right to this office. The dispute which developed on this point thus renewed the feud between the families (ii). At about the same time Robert Ker, son of Cesford, was involved in the murder of William Ker of Ancrum, a follower of Fernihurst, who had not only taken part in the Rutherford attempt to remove Cesford from the provostship, but had also forcibly removed a prisoner from one of Cesford's warden courts (iii); this re-opened the rift between the two branches of the Ker family. On the West march, the virulence of the feud between the Maxwells and the Johnstones was abated for a time, but the tension was always present. Several other feuds developed round the person of Thomas Kirkpatrick of Closeburn, Sheriff-depute of Dumfriesshire, who felt that the jurisdiction of his office was being reduced, by grants of commissions of justiciary to private

(i) C.B.P., i, 668, 678.

(ii) R.P.C.S., iv, pp.530, 544.

(iii) ib., iv, pp.566, 585-6; C.Scot.P., x, pp.551-2, 562.

individuals such as James Douglas of Drumlanrig and James Johnstone of Dunskeillie, and by the power of other local officials such as Maxwell (i).

Conflicting powers and jurisdictions were obviously important in all these feuds, whether as a symptom of an existing feud or as the cause of a new one. Maitland's policy with regard to feuds took cognizance of this fact and accepted it; the parties at feud with a royal official were exempted from his authority and were themselves given, under the Crown, authority over and responsibility for their dependants. Thus Fernihurst was exempted from Cesford's wardenship, and he himself acted as warden, negotiating with English officials to redress bills against his own men (ii); Johnstone was exempted from attendance at Maxwell's courts and given power to hold justice courts over his clan and kinsmen (iii). By clarifying the jurisdictional aspect of the dispute between two feuding parties, the Crown lessened the point of conflict between them; any later disputes over jurisdiction could therefore be settled by litigation in the central courts, as it was between Johnstone and Maxwell, and between Kirkpatrick and Drumlanrig (iv). The settlement of the feud was channelled towards the law rather than violence (v).

This channelling of the feud was not an innovation of this decade, but Maitland's use of it shows the emphasis he put on action by the central power. The same emphasis may be noticed in his handling of the other basic methods of frontier administration. Raids were held, and order kept by means of the General Band and pledges. He improved on Morton's measures to ensure

(i) R.P.C.S., iv, pp.614, 624; ib., v, pp.88-9, 106.

(ii) Newbattle Mss., xi, no.56; C.Scot.P., xii, pp.46, 52; see also Chap. 3, section 4, p.171.

(iii) Fraser, Annandale, i, pp.55-6.

(iv) ib., i, p.58; R.P.C.S., iv, pp.624, 642, 696, 735-6.

(v) cf. Chap. 5, section 20, p.275.

the safe detention of pledges; the penalty of £2000, to be levied against those who allowed pledges to escape, received Parliamentary authorization in 1587, and, later, the issue of permits to free the pledges was tightened up by ensuring that such permits be signed by several members of the Council, including Maitland as Chancellor (i). This all increased the direct responsibility of the central government in the day to day operation of border administration, and it is particularly noticeable that after Hamilton demitted his office of Lieutenant in December 1590, no further Lieutenants were appointed until late in 1598. In the period between, the duties undertaken by lieutenants were done by the king himself, or members of the Privy Council. Of the nine judicial raids which took place, James VI attended seven in person, and Maitland attended three before his death, while the 'lesser' council officials rather than the nobility were responsible for their control (ii). The local frontier officials remained those, linked with Maitland, who had administered in his absence, except that Carmichael, also related to him, took over the West march again on his return from Denmark, Maxwell being content to act as his deputy.

The only innovation of this period was the setting up of the special court for dealing with border and highland cases which had been provided for in the 1587 act; and even this was not new, in as much as it was merely the creation of a special committee of the Privy Council which had always dealt with cases of this nature. It was a council of administrators, for no great noble was a member; it met frequently at first, but irregularly; and it attended to a considerable quantity of business (iii). But as an

(i) see Chap. 5, section 2b, p.263.

(ii) see Appendix 7.

(iii) For details of this committee, see Chap. 5, section 1, pp.246-8.

administrative unit it lasted for less than six months, and its effectiveness is difficult to estimate. It is clear that it came to be regarded as an unnecessary unit as its personnel were all members of the Privy Council and could carry out exactly the same duties within the framework of the larger body; in this sense this administrative experiment was a failure. At the same time, when taken in conjunction with the other administrative action of the government in the borders, it is obvious that a measure of success was achieved in the maintenance of law and order. English officials were certainly satisfied with the measures taken to ensure that redress was given to complainers, and even in Liddesdale Bothwell was successful in satisfying some complaints (i). By March 1591 this continued pressure by the Scots Government had produced a satisfactory state of affairs (ii).

The importance of administrative continuity has already been stressed as a factor for maintaining control in the Borders; it was at this point that political events threatened to break the continuity which had been a feature of frontier administration since Maitland took over the main direction of the government. These events centred round Francis Stewart, Earl of Bothwell, who in April 1591 was accused during the course of a witchcraft trial of having practiced sorcery against the King (iii). The pathological interest James had taken in these cases combined with this revelation to produce in him an implacable hatred of Bothwell, and the entire power of the Crown was henceforth used to hunt down and punish him. The resulting political situation was exceedingly complex, and it is difficult, if not impossible, to give a brief

(i) C.Scot.P., x, pp.399, 447, 454-6, 481.

(ii) *ib.*, x, pp.481, 485.

(iii) Stafford, Witchcraft Cases.

and adequate description of it. Maitland, at the centre of government, became the target for Bothwell's hate. The two men had always disliked each other, possibly owing to a dispute over their respective claims to the commendatorship of Coldingham (i). Bothwell, since the King's return from Denmark, had been an active administrator on behalf of the Crown, and his complaint of persecution at a time when his administration was showing signs of success was probably justified (ii); it was natural for him to attribute his misfortune to Maitland, who relied so much on men of lower birth, and to see in this attack the opening of a new militant phase in Maitland's attempt to reduce the administrative influence of the aristocracy. Bothwell was therefore able to draw to him those members of the nobility who resented Maitland's domination. Maitland's association with the Hamilton faction also made him a target for partisans of the Stewarts such as Lennox, who seldom supported Bothwell openly; he was accordingly under fire from two powerful groups at the same time, and his authority rested almost exclusively on the power of the Crown. It was this fact that enabled Bothwell to take the initiative at almost every stage in the conflict.

At this point two other factors increased the political complexity of Maitland's position - religion and foreign policy. The King's personal friendship for Huntly, Maxwell and other nobles known to be Catholics undermined Maitland's position, as he was dependent on these men for his own support among the aristocracy. When, in February 1592, Huntly was involved, with or without the connivance of the King, in the murder of the Earl of Moray, a Protestant and a follower of Bothwell, the affair began to take on the complexion

(i) see Appendix 2a, p.10.

(ii) R.P.C.S., iv, pp.805-6; C.Scot.P., x, p.568.

of a religious struggle, with Maitland and the King at the centre of an unpopular Catholic faction. The entire edifice of Church-State co-operation which Maitland had built up began to crumble, and this could not be arrested even by the Parliamentary recognition of the Presbyterian organization of the Church which Maitland arranged in May 1592. The difficulty of this situation was intensified by the fact that the English government believed that it had positive proof that Huntly and other Catholics had been involved in negotiations with Spain. As the Spanish problem obsessed Elizabeth, the fact that James, in spite of several communications from England, refused to take any measures against his favourites led to the cooling of the relations between the two countries - Bothwell's supporters were received in English territory, and James's pension was reduced (i).

The effect of all this on conditions in the borders was considerable. Bothwell was a border landowner of some consequence and drew much of his power from this fact; moreover the faction struggle between him and Maitland extended itself to the borders and re-animated many of the basic local feuds. Cesford, with his close family relationship to Maitland, was openly anti-Bothwell, and the young Robert Ker seems to have borne a personal grudge against the Earl (ii). On the other hand, Walter Scott of Buccleuch supported Bothwell, who was his step-father. The tension between Cesford and the Scotts was revived by central party politics, and it was considerably increased when Buccleuch, who had been appointed Keeper of Liddesdale in July 1591, was himself removed from the office in favour of Robert Ker who, by Maitland's influence

(i) For fuller details of these events see Stafford, pp.58-73; Lee, Maitland, pp.229-50.

(ii) Moysie, p.111.

had been forgiven for his part in the murder of Anorum (i). Tension between Cesford and the Rutherfords and Fernihurst Kers was also intensified by the fact that Fernihurst and Hunthill joined the Bothwell faction (ii). On the West march, Carmichael and Maxwell were of Maitland's faction, while Johnstone supported Bothwell and assisted him personally at the raid of Falkland (iii); the feud which was thus re-opened resulted in the murder of Maxwell two years later. Widespread local opposition to both Carmichael and Maxwell showed itself in complaints to the council concerning the powers of their warden commissions, and while this opposition cannot be shown to have been pro-Bothwell, it was certainly anti-Maitland (iv). On the East march, Hume, who at first had openly supported Bothwell, was forced to submit to imprisonment by a military expedition in July 1591, but thereafter became a firm ally of Maitland.

The religious aspects of the struggle had little or no effect in the borders, although Maxwell was, and Hume probably was, a Catholic. Family alliance, political faction and local feud was the basis of friendship and enmity among borderers, and religion at this time was of relatively slight importance (v). The political factors increased the local disorder, since the border administrators, as representatives of Maitland, were all directly involved in the struggle, especially after young Cesford had replaced Bothwell and Buccleuch in Liddesdale. Administration was not easy in these circumstances and much of it took on a political complexion. The machinery of the judicial raid was used primarily to hunt down Bothwell and

(i) Appendix 3; James Sext, p.245.

(ii) Moysie, p.106.

(iii) ib., p.109.

(iv) R.P.C.S., iv, p.680; ib., v, pp.39-41; C.Scot.P., x, p.777; James Sext, p.263.

(v) cf. C.Scot.P., xi, pp.75-6.

his adherents on the borders, and ordinary legal proceedings were more rigorously conducted against known partizans of Bothwell; there may very well have been political undertones in law suits against men dependent on Fernihurst, Buccleuch and Johnstone (i). There is no evidence of days of truce being held at this time, but, equally, there is no evidence of any English discontentment with frontier administration, except for the inability of Robert Ker to control Liddesdale adequately (ii).

The pressure which led to Maitland's retirement from court in August 1592 was initiated by Queen Anne, who had disliked him ever since her arrival in Scotland, partly because she knew that he had favoured another match for the King, and partly because he possessed the Lordship of Musselburgh, lands which she regarded as rightfully belonging to her. She, in close alliance with Lennox, made life uncomfortable for James, and Maitland, whose effective power was reduced by the opposition of so many parties, was requested to retire. Lennox now became the leading figure in the Scottish government; but, although the King's private life may thereby have been made more easy, the political problems which faced him were not solved. James continued to support the Catholic Earls in the face of the distrust both of the kirk and of England, even when this distrust was intensified by the discovery in December 1592 of the 'Spanish Blanks' which implicated Huntly seriously in a Spanish plot. Although forced to take some measures against Huntly, the King was very half-hearted about it, and, regarding Bothwell as his basic problem, ignored all complaints from the English government throughout the first part of 1593.

(1) R.P.C.S., iv, pp.682, 709, 806-7.
(11) C.Scot.P., x, pp.631, 700.

It is not immediately clear how this increased tension in Anglo-Scottish relations affected border affairs. The retirement of Maitland brought about some changes among the border officials. On the West march Maxwell replaced Carmichael, who was weary of the office through financial hardship, and, as this change was probably made under Maitland's influence, it implied little change in policy. In Liddesdale, Lennox himself took charge as Keeper, and appointed Fernihurst as his deputy. While this did not improve relations between the feuding families of Kers, it did not diminish the effectiveness of border administration; both Cosford and Fernihurst, each within his own jurisdiction, adequately satisfied English complaints in the early part of 1593 (i). On the West march, however, Maxwell pursued a different course, arranging days of truce and failing to keep them; but this policy was one which was initiated by the King, as the English warden on the West march refused to give redress for a bill against Englishmen who had assisted Bothwell (ii). This shows that the government, even at this time of stress, had sufficient authority with the wardens to control their activities; frontier co-operation was good or bad according to the necessities of royal policy. The efficacy of Maitland's administrative machine therefore continued in his absence.

Even so, James felt the lack of his Chancellor to guide his routine affairs, especially as he began to distrust Lennox, who had assisted Bothwell in an attack on Holyrood; he therefore attempted to mollify the Queen, who was the real bar to Maitland's return. The Chancellor surrendered his rights in Musselburgh to Anne, thus engaging her friendship, and in

(i) C.B.P., i, 808.

(ii) ib., i, 777, 788, 792.

October 1593 he was restored to authority (i). Immediately Maitland turned his attention to border affairs: a judicial raid was organized to Jedburgh and he arranged for the removal of Fernihurst from the deputy's office in Liddesdale and his replacement by his nephew, Robert Ker. But the main problem facing him was to restore Crown influence with the Kirk and with England, and this could only be done by acting against the Catholic lords. By an Act of Abolition of November 1593, a formula was devised whereby Huntly and his associates were to be forced either to conform, or to place themselves in a legal position which the King could not ignore; either choice would result, for the Government, in mollification of its relations with both the Church and England. This was in fact what happened; the Catholic Earls placed themselves beyond the law, and the King was forced to take measures against them. Although he did this slowly, it did result in a measure of agreement with the extreme Presbyterian faction, who gradually began to withdraw their support from Bothwell; and, as events developed during 1594, James was convinced that his former favourites were a danger to the throne, particularly after they had welcomed Bothwell, now bereft of much of his former support, into their ranks. In October 1594 James organized an expedition to the North against both Huntly and Bothwell, and early in 1595 the members of these dissident groups were forced to leave Scotland (ii).

These events clarified the political situation within Scotland, resulting in the consolidation of the position of the Crown and in the justification of the government's administrative machine; but they had little effect on the administration of the borders. The government continued to

(i) see Lee, Maitland, pp.259-65.

(ii) ib., pp.255-84; Stafford, pp.98-115.

control the frontier region adequately; in September 1593 Parliament reaffirmed some of the legislation of 1587, and throughout 1594 the Council took care to encourage the wardens to perform their duties properly (i). In October 1594 Walter Scott of Buccleuch was appointed Keeper of Liddesdale, replacing Robert Ker of Gosford who had been in charge of the region as deputy for Lennox. Old William Ker of Gosford had about this time felt the strain of the wardenship to be too much for him, and Robert Ker was now full warden of the Middle march; he clearly could not combine this task successfully with the charge of Liddesdale. Buccleuch, on the other hand, had been drawn within the Maitland orbit, and could now be trusted by the government to administer Liddesdale efficiently. This change of officers was therefore not a weakness in government policy, for although the office was granted to Buccleuch hereditarily, it was probably already clear to the Government that, on James's succession to the English throne, the office would cease to exist altogether.

The West march, however, was a source of weakness to the Crown and constituted the main administrative problem for the Government for the succeeding four years. On 6 December 1593 the tension between the Maxwells and the Johnstones, inflamed by Johnstone's support for Bothwell, broke out in an open battle at Dryfe sands, in the course of which Maxwell was killed. This created on the West march a situation similar to that on the Middle march in 1552 after Buccleuch had been killed by the Kers. A royal official had been killed carrying out his duty, and the only local man capable of taking over his task was the person responsible for his death who, even apart from his sympathies with Bothwell, could not be appointed to the vacant position.

(i) C.Scot.P., xi, pp.224-6, 249, 357-8, 454, 485.

To place a man from the central government in office was difficult as Carmichael, the only man who could have acted effectively was still unwilling to burden himself again with a task he had left only 18 months before, financially ruined (i). The immediate solution was to place the office in commission; ten men, including William Lord Herries, Douglas of Drumlanrig, Gordon of Lochinver and other important men of the march, were entrusted with the duties of the warden. There is no evidence of the effect of this interesting administrative experiment; presumably it failed as within six months Herries was acting alone as warden. He was removed from office in July 1594 owing to complaints from the English who distrusted his Catholic sympathies, and was replaced by John Lord Hamilton; he in turn was followed in December by Herries again, but towards the end of 1595 the office was vacant and remained so until another commission of local men was appointed in May 1596. In July 1596 Johnstone, now absolved from his crime, received the appointment until he in turn was replaced in November 1597 by Andrew Stewart of Ochiltree (ii). This lack of continuity in an area notorious for internal disorder did not make for good government; on the other hand, English complaints against the West march were not noticeably heavier than those against the other marches, for the central Government took special care to assist the wardens with judicial raids, and the wardens themselves endeavoured to carry out their tasks efficiently.

The death of Maitland in October 1595 removed from the Government its guiding hand, but it did not alter the character of the administration nor the majority of its policies. 'Lesser men' were preferred as administrators rather than the nobility, which had already lost much of its power and control

(i) O.Sect.P., xi, pp.97, 101-2.

(ii) see Appendix 3.

over affairs. The appointment of the Octavians at the centre of government finance was in fact a continuation of the Maitland system. But the efficiency of these men, coupled with the known Catholic sympathies of some of them, produced a series of political crises which eventually led to their dismissal, a complete break between the Kirk and State, and the reintroduction of Episcopacy. None of this, important as it was, affected the borders in any way (i).

Relations with England similarly were not affected by Maitland's death. The general policy of friendship was maintained, and James's pension continued to be paid, but until the Union in 1603, there was continual wrangling over several rather petty matters; the peace between the countries was never broken in spite of the tension created by mutual mistrust. It is possible that some of this bitterness affected frontier administration in a small way, but it has left little trace, and it was rather the overall policy of friendship which controlled relations on the borders. This is clearly shown by the notorious 'Kinmont Willie' episode, and the events arising therefrom.

On 17 March 1596, after a day of truce held between the deputies of Buccleuch and Scrope at which, apparently, redress was given, Kinmont Willie Armstrong was illegally captured by English forces and detained in Carlisle castle. Buccleuch seems to have adopted the strictly legal method of an approach to Scrope for the return of this man captured during a truce period; but Scrope, who disliked Buccleuch and resented his "pryde" and "skorne", refused to release him. The Keeper of Liddesdale then approached Bowes, the

(i) Stafford, pp.163, 178-83.

English ambassador in Edinburgh, who corresponded with Scrope on the matter; Scrope continued to justify his action on the grounds that Armstrong was a notorious offender. Legal action having failed, Buccleuch on 13 April, took the step of attacking Carlisle castle and releasing the prisoner, taking care not to remove anything from the castle, nor to injure seriously anyone within it (i).

Considerable uproar was caused by this escapade. Elizabeth furiously demanded the imprisonment of Buccleuch, whom she suspected of Catholic sympathies and possibly of Spanish plotting (ii); the Scots people and government considered that Buccleuch's action, in the circumstances, had been justified, and were willing to defend him. James himself, although approving of Buccleuch's action, was more willing to please Elizabeth, and it was with difficulty he persuaded Parliament to allow him to submit the matter to border commissioners. In August Buccleuch was warded in St Andrews Castle for another offence, and the Queen was sufficiently mollified to allow the affair to blow over, especially as the threat of a new Spanish armada made it advisable for her to be on more friendly terms with Scotland (iii).

The tension caused by this affair was important in showing to the Governments of both countries that frontier redress, although carried on in the recent past in a fairly adequate manner, required reorganization. The Scots had in fact realized this, and, even before the Buccleuch incident had shown the necessity, James had tentatively sounded Bowes on the subject of extraordinary commissioners for the borders (iv), and was organizing the usual

(i) Warrender, ii, pp.292-9; C.B.P., ii, 237, 251-2. The writer of the unsigned letter to Bowes, dated 1 April 1596, calendered C.Scot.P., xii, p.180, was clearly Scrope.

(ii) C.Scot.P., xii, p.141.

(iii) Stafford, pp.170-1.

(iv) C.Scot.P., xii, p.167.

raid to control the West march. In October, commissioners of both realms were appointed, but the meeting was postponed owing to renewed tension between the monarchs, caused partly by the raiding exploits of Cesford and Buccleuch and partly by the publication of the Faerie Queen which upset James (1). The commission did meet in January 1597. Serious difficulties immediately arose owing to the activities of Buccleuch and Cesford, who seemed to be bent on preventing any successful outcome of the deliberations by creating almost open warfare between the borderers. But these difficulties were partially overcome, and by mid-February a large number of bills for the East and Middle marches had been fyled. In April the commissioners began to tackle the problem of the West march, and more bills were fyled. Finally a new treaty was signed on May 5, the clauses of which partially reorganized border law to increase its effectiveness (11). The most important feature of this agreement was that pledges should be given to the opposite country for the redress of the fyled bills, for out of this clause arose much of the subsequent difficulties. A meeting was held on 25 June for the exchange of pledges, but several of those nominated failed to present themselves; further meetings brought about little more success, as both Buccleuch and Cesford were unwilling to enter their men, and continued their policy of disturbing the frontier by frequent raids.

It would appear that James was torn at this time between a desire for efficient administration within his realm, and a desire to maintain some degree of independence from England. Neither Cesford nor Buccleuch could have

(1) James felt that certain passages in Spenser's poem, particularly the references to "false Acrasia" in Book 2, reflected on the character of his mother, Mary, Queen of Scots (Willson, p.139; C.Scot.P., xii, p.359).

(11) Tough, pp.124-35, 264-6.

carried out their frontier disturbances without some measure of support from the Crown, especially as Gosford was now a member of the Privy Council and a gentleman of the King's bedchamber. The tension was possibly created deliberately by the Scots, and may be linked with the probability that James was intriguing with the Earl of Tyrone, who was leading a revolt against Elizabeth in Ireland at this time (i). But the over-anxious English officials exaggerated these frontier disturbances; for King James was very careful to ensure that order was maintained on the Scottish side of the boundary, and in April and November 1597 he conducted judicial raids in person to Dumfries which were very successful. Moreover, James's instructions to Hume, the commissioner responsible for the delivery of the pledges, suggest that Buccleuch's activities at least were to be kept under control (ii); and Carnichael, the government expert on frontier affairs, was sent during the course of the proceedings to ease the delivery of some pledges to the English wardens, and achieved some success (iii).

By the end of 1597 James was beginning to worry about his succession to the English throne, and it is possible that the tension over the delivery of the pledges and over Ireland was created deliberately in order to blackmail Elizabeth into declaring him her successor (iv). If this was James's policy it had clearly failed, and, as his pension had not been paid for the previous year, he seems to have decided to change his tactics. In September 1597 Buccleuch entered himself into ward in England, and he was followed in February 1598 by Gosford; each remained sometime in England until other pledges were delivered, Buccleuch being released in February and Gosford

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- (i) *of. Stafford*, pp.186-9; *Hayes*, pp.285-90.
(ii) *H.M.S.O.P.*, Milne Home, p.243.
(iii) *C.B.P.*, ii, 722, 733, 736-7.
(iv) *Stafford*, p.190, quoting *S.P.Sootland*, LXI, no.39.

in June (i). The delivery of the wardens ended much of the disorder on the frontier. The meeting of the commissioners could now be regarded as having achieved some success; most of the actual redress had not yet been made, but that was now an administrative not a political problem, and there was on both sides some assurance that recompense would be made. It was probably in recognition of this fact that James received in April the long-delayed instalment of his pension.

A contemporary chronicler wrote of this time, "the King efter all his obedience maid to Ingland in delyverie of his twa wardens ... tuik great paynis to paeifie all border quarrels at hayme" (ii); his "paynis" amounted in fact to an enthusiasm for efficient administration. The raid to Dumfries in November 1597 was successful; James announced to the English deputy warden, Leigh, that he meant to stamp out all malefactors "with fyre and sword ... to their exterminacion and wreike", and Leigh reported that he had been an eyewitness of part at least of the royal campaign (iii). At the end of the expedition James, realizing the importance of continuous action in maintaining order, appointed Andrew Stewart Lord Ochiltree to act on the West march, and arranged for him to have the use of a continuous military force by imposing on the lieges of Scotland a quarter system of border service. This quarter system did not work, and the obligation of service was, early in 1598, commuted to taxation (iv); Ochiltree, however, was an active administrator, and the Edinburgh burgess, David Moysie, who had himself suffered from the activities of borderers, recorded with glee how he "hangit and slew

(i) C.B.P., II, 784, 910-11, 941.

(ii) Warrender, II, p.454: an extract from a variant of the Historie of King James the Sext.

(iii) C.B.P., II, 832, 844.

(iv) see Chap. 5, section 3a, p.292.

threescore with the moir of notable thieves" and kept the country under control (i).

The Scots government also forced its officials to attend more diligently to days of truce, with the result that frontier negotiation improved. Gesford in particular became a reformed character and attended carefully to his duties. It seems probable that, as one of the most powerful and influential men on the borders and deep in the King's confidence, he realized how important it was that peaceful relations should be kept with England now that it was almost certain that James would succeed to the English throne. Gesford took the opportunity during his enforced stay in England, to make his peace with Elizabeth, and Bowes, equally far-sighted, recommended Cecil to accept his overtures (ii). Such a change of attitude among certain of the borderers coupled with the efficiency of the central Government in controlling Frontier administration made for decreasing disorder until the Union in 1603.

In the introductory section to this chapter criticism was made of the assessments made by certain authors of the efficiency of frontier administration, and it was suggested that a more valid assessment could be made by viewing that system as a whole, bringing it into a broader perspective to include an examination of international relations, the internal political and administrative organization of the frontier stages, particularly Scotland, and the personalities and characters of some of the frontier officials. It remains now to draw some conclusions from this examination.

(i) Mervie, p.136.

(ii) C.B.P., ii, 909, 911, 913.

Hodgkin asserted that anarchy on the frontier increased prior to the Union; and from the increasing volume of records on the subject and the written complaints of the English wardens this would at first sight appear to be a valid assessment. The present writer, however, is of the opinion that the volume of disorder on the marches remained much the same throughout the century. The increased quantity of record material is rather attributed to increasing bureaucracy, while the growing petulance of the English wardens, whose complaints form the bulk of these records, resulted from a new attitude which developed out of the changed international situation.

The importance of international relations has clearly been shown. In the early part of the century the results of the battles of French and Spanish kings in Italy could influence indirectly the conduct of days of truce; and, later, the activities of French, Spaniards and Dutchmen could partially cause the fall of a Scottish regent and a change in the personnel of Scottish frontier administration. Affairs on the continent, in as much as they affected Anglo-Scottish relations, had a considerable impact on border administration, but, as the century passed, this impact gradually decreased; continental affairs lost their power to interrupt the good relations developing between two Protestant states. There was always danger of tension in Anglo-Scottish relations, but this danger, too, tended to diminish towards the end of the century, particularly after the League of 1586 had been concluded; the possibility of war was virtually eliminated, and no degree of tension could obviate this fact apparent to the Governments in London and in Edinburgh. The dangers arising from frontier incidents were thus reduced in importance, and it was not so necessary politically to take care for their redress. The Governments, particularly the English Government, were much less concerned with border transgressions; this resulted, first, in the rapidly increasing number

of unredressed border complaints, and, secondly, in the diminished importance of the English wardens, no longer encouraged to be efficient by their Government, and starved of the men, money and materials for defence, they considered necessary. This was the real cause of their petulant outpourings to the Privy Council.

The personal attitudes of the borderers affected control throughout the century. The feuds of the Scotts and the Kers, the Maxwells and the Johnstones are clearly seen to have impeded the efficiency of the Scottish government, and the same was true of feuding families on the English side of the frontier. This effect was increased, especially in Scotland, when the feuding parties took opposite sides in the faction squabbles which formed the politics of the time. More important in impeding administration were the personal likes and dislikes of officials on opposite sides of the border. The quarrel between Daore and Terreglis held up redress on the West march in 1561; that between Foster and Cesford, combined with Foster's friendship for Fernihurst, a rebel in the eyes of the Scots government, made administration on the Middle march difficult for several years; and the animosity between Scrope and Buccleuch was almost certainly responsible for the tension created by the Kinmont Willie affair. The personalities of these officials and other borderers was certainly an important factor.

Perhaps most important of all was the internal conditions of the states and the policies of the governments. If there was any insecurity in the Government, border administration was affected. This was amply shown, for Scotland, by the situation during the regency of Angus, and for England, by the events at the time of the Pilgrimage of Grace. The effect of firm government policy on the borders was demonstrated for England by the total reorganization after the Pilgrimage of Grace, and for Scotland, by the policies

of James V, Mary of Lorraine, Morton, Maitland and James VI, in attempting to bring the Scottish borders more directly under central Government control. This point will be more fully discussed in the next chapter.

The efficiency of frontier administration therefore depended on the interlinking of several disparate factors. Should any one of these be unfavourable, particularly the international situation or the internal policy of either state, efficient administration was virtually impossible. And even if the relations between the two countries, and the policies and abilities of the two governments, favoured good border control, as they seldom did during the early portion of the century, the good effect could be minimised by the personal attitude of one or other of the wardens. Taking all these points into consideration, it is impossible to make any simple generalization which covers the entire administration over the entire period under review. One cannot say that it was good administration, or that it was bad administration; only that at any particular time it was as good as the two Governments concerned wished it to be, or were able to make it.

Chapter 7

Conclusions

The administration of the frontier region was a difficult problem for the Governments of both England and Scotland. It has already been emphasised that the inhabitants of this region formed a distinct frontier society split in two by a political boundary. They tended to ignore the boundary in their economic and social relationships, both in their friendships and their enmities; they were resentful of the authority of either government and generally refused to co-operate with them unless under pressure. The full history of the administration of these people would require the examination of the methods used by both governments to impose their will on the inhabitants of their respective frontiers. This present study has concerned itself only with the methods used by the Scottish government; but it will have been made evident from a few points of comparison made with English officials and institutions that the structure of administration developed by the English government was in many respects similar to that used by the Scots. This is a natural similarity when one considers that both governments were faced with the same problem. But it must not be over-emphasised; it was a superficial similarity, for each government brought to its solution of the problem a distinct administrative outlook which produced considerable diversity in the detail of frontier organization. This different outlook was caused by the fact that, by the middle of the 16th century, England had travelled further and more successfully than Scotland on the road towards administrative centralization.

The main feature of English frontier administration was the

outlook created by the Henrican reforms of Thomas Cromwell, the idea of the omniscience of the central Government. To this should be added the obliteration by Henry VIII of all sources of opposition to royal central power - the complete destruction of the frontier franchise jurisdictions and the effective elimination of the power of the most important frontier magnates. This meant that the English central authorities wished to, and had the power to, control closely the administration of the frontier. For a century prior to this, the office of warden had been held by the most important magnates of the region over whom the Crown had little or no control. Now lesser men held the position, but still men of the locality such as the Daeres and the Scropes on the West march and Foster on the Middle march, men who relied primarily on the Crown for their position of authority and who consequently could be controlled by the Crown. Later still, during the Elizabethan period, a third type of warden appeared, officials of the central government sent to the frontier for a turn of duty; these men, such as William Lord Grey of Wilton, Peregrine Lord Willoughby d'Eresby, Henry Baron Hunsdon and his two sons Robert and John Carey, were Southerners who relied on the government for their position and who furthermore held the same views as the government on centralization and control. The entire tendency was towards effectiveness of control, and the elimination, beyond a certain point, of independence of action.

As in Scotland, the English wardens had some responsibility for basic internal administration. They had power to make administrative ordinances affecting many aspects of the daily life of the borderers, and breaches of these ordinances, along with breaches of the customary March law, were examined by them in their Warden Courts (1). These cases dealt mainly with

(1) Tough, pp. 151, 157, 163.

frontier matters, properly within the wardens' international jurisdiction; but they included also matters of internal administration such as action against thieves, fugitives and seditious persons, the reset of fugitives and stolen goods, and the appeasement of feuds.

The wardens' jurisdiction rested on the ordinary English system of local justice which operated in the border countries as elsewhere; ordinary County Assizes were held, and the Justices of 'oyer et terminer' held their normal gaol deliveries with regularity. To these local courts should be added those of the two towns of Carlisle and Berwick. Sometimes the wardens had the task of supervising the other local officials; they could preside at coroners' inquests and at the sessions of the Justices of the Peace, and sometimes commissions of oyer and terminer were made out in their name (1). This gave great additional power to the wardens, but this power was that only of an ordinary local official, although geographically more extensive than most, and not a special jurisdiction as was given to the Scottish wardens. The general tendency was for each part of local government, each with its own link with the central government, to operate by itself as in the rest of England. The wardens' authority was great, but, apart from their international duties, it was exercised within this ordinary framework.

Extraordinary forms of maintaining internal order were on the whole absent. For example, although the Scots regularly made use of judicial and military expeditions against borderers, such raids were seldom used by the English government. In the earlier part of the century they may have been as common as in Scotland. Northumberland's activities in January 1528 included the burning of the houses and corn of fugitives, the taking of

(1) Tough, p.163; Coulomb, p.17.

pledges from the English clans, and the collection of signatures to a "book of articles", in some respects similar to the Scottish General Band (1); again, in 1538 local officials thought a raid to be the natural method of bringing recalcitrant borderers to heel. But on this latter occasion the central Government thought otherwise, and Cromwell replied to Carnaby that Henry VIII preferred to rely on 'honest secret policy', and refused to permit wholesale devastation until all other methods had been found ineffective (ii). This policy appears to have been followed throughout the remainder of the century. The ordinary system of English local government was regarded as adequate.

This system was not in itself so complex as the Scottish system of local government with its large number of baronial and regalian units, but it was equally productive of conflicts of jurisdiction. For example, the town of Berwick claimed to be outwith the jurisdiction of both sheriff and warden, and that the arrest of any inhabitant of the town could be made only by town officials acting for these officers; even within Berwick there was conflict between two local courts, those of the Mayor and the Marshal (iii). Difficulties such as these were not always resolved by the English Privy Council. Local officials were not always efficient, and prisoners must often have evaded execution and been released on payment of fines - although English wardens found this so reprehensible when done by Scottish judges to Scottish malefactors of the same sort. Courts were not always unhindered in their activities; as late as 1597, at the County Assizes held at Carlisle, prisoners were forcibly removed from the custody of the court (iv). Evidence of disorder

(1) Hy. VIII, iv, 2, 3816.
(iii) Tough, p.164.

(ii) ib., xiii, 2, 1095.
(iv) ib., p.163.

on the English side of the frontier is, in fact, just as easy to obtain as it is for the Scottish side, in spite of the apparently greater concern of the English government to maintain order. Social conditions were as bad as in Scotland, and this was a factor causing open political revolts against the government; the Pilgrimage of Grace and the Rebellion of the Northern Earls were the most important, but there were others, less well known, such as the Wakefield conspiracy of 1541 and the Seamer rebellion of 1549, which affected affairs at the frontier (1). While these revolts are evidence of disturbed conditions in and near the English frontier region, it must be admitted that the superior central organisation of the government meant that the disorder was brought under control more easily than similar disturbances in Scotland, where the Hume revolt on the East march in 1516 and the Maxwell-Johnstone feud on the West march proved almost impossible to subdue.

The English wardens, especially those who came from the South, tended to regard the Scots wardens as their social inferiors and themselves, supported by the power of the English Privy Council, as much more efficient. In 1515 Daere complained that Cesford was a man "without wisdom and substance" and refused to meet him; in 1543 Lord Lisle refused to meet any of the Scots "beying but mean personages"; and in 1596 William Bowes complained of "the unapnes of border-bredd persons to beare such offices" (11). The Scottish wardens, with their uncouth ways and low standard of living may well have appeared socially inferior to the more wealthy and sophisticated Englishmen; yet they were among the most important men in Scotland, socially and

(1) Dickens, Holgate, pp.12-13.

(11) Hy.VIII, 11, 1, 799; Hamilton, 1, pp. 456-7; C.B.P., 11, 499.

politically. Bowes's lofty complaint was that of a man confident in his own efficiency and that of his government, but forgetful of the fact that the Scottish methods were those which had behind them the tradition of several centuries of frontier administration not only in the British Isles but elsewhere in Europe, and that his own government had but recently abandoned the same tradition.

In spite of their central organization and constant links with their central Government, even in spite of being Southern men, well-trained and with the interests of the Government at heart, the English wardens cannot really be said to have been much more effective than their Scottish counterparts in controlling the borders. They had to face the same intractable problems created by the nature of the frontier region, the turbulent inhabitants of which resented and frequently rejected their authority. In England, as in Scotland, there were irresponsible clans such as the Grahams, whose raiding activities caused continuous trouble both internally and internationally and who were far from being amenable to any form of government pressure. Disturbances caused by feuds were common in England, and, as in Scotland, the wardens were unable to stand apart from them, their authority thereby being reduced; even as late as 1596 and 1600, Eure and Lowther found their efficiency impaired through being involved in feuds and faction quarrels (1). Again, the authority of the English warden was limited by the existence of the jurisdictions of other local officials in the region, although this was not a major difficulty as in Scotland.

The question of religion also caused internal difficulties. It is probably true to say that the borderers on both sides of the frontier were

(1) C.B.P., II, 441, 1183.

largely indifferent to the form their religion took. But although further South, in Yorkshire, the English reformed religion had taken firm root even before the temporary restoration of Catholicism under Mary Tudor (i), the old religion remained a powerful influence near the frontier itself; this was probably due not so much to any basic loyalty to the priests on the part of the borderers as to a resentment of any innovation. After the Elizabethan settlement the majority of the people conformed outwardly, and the change-over took place with apparent ease; but both bishops and secular officials were far from easy at the situation, and an investigation made in 1564 into the religious leanings of officials such as J.P.s showed there were good grounds for their disquiet (ii), which was confirmed by the outbreak of the Earls' rebellion six years later. Probably only the wardens themselves and a few other officials accepted and supported the settlement wholeheartedly, and they had a difficult time controlling the "prowde and arrogante" Papists, especially after the campaigns of the Counter-Reformation got under way (iii). In Scotland the situation was similar; Protestantism was more powerful in the Central Lowlands, and the borderers tended to remain faithful to Rome, at least until the end of the century. Bishop Leslie commended them for their fidelity to Rome, and Calderwood regarded the men of the Merse and Teviotdale as "corrupt in religioun" (iv). Hume, and probably Gosford too, was willing to change his religion as he thought most convenient at the time. On the West march loyalty to the Roman religion was, under the encouragement of Maxwell and Herries, more openly expressed. As long as adherence to Rome was regarded as a political

(i) Dickens, Marian Reaction, 11, p.21.

(ii) Tough, pp.63-64.

(iii) C.B.P., 1, 102.

(iv) Leslie, 1, p.101; Calderwood, iv, pp.657-8, 662.

crime, borderers were a source of trouble to both governments; in 1587 the Scots government made a raid to Dumfries specifically to tidy up the political and administrative difficulties caused by the religious attitude of the Western borderers.

In addition to these difficulties shared with their Scottish counterparts, the English wardens towards the end of the century had to face the resentment caused by the fact that they were outsiders. The English borderers tended to remain loyal to the nobility who had formerly controlled them. In 1570 Scrope found the men of his wardenry pining for the rule of the Dacres (i); and it is clear that bitterness against the Southern men who had replaced their former lords influenced the borderers' co-operation. Eure asserted that they envied the strangers, and overcharged them for food and lodging; more seriously the borderers were unwilling to assist the wardens actively in the exercise of their duties - they tended to evade the question of answering for their servants and tenants, and often failed to turn out when required by the warden for such purposes as following the trod (ii).

In the face of this local animosity, and the dangerous activities of the Scots, the English wardens frequently felt the necessity of seeking support from the central government. This was not always forth coming. The money for military forces and the repair of the defences of various strong-points was seldom supplied by the parsimonious English Queen. Eure asked repeatedly for military forces, apparently without result, and Scrope was seriously troubled when Elizabeth would not allocate any soldiers to him (iii).

(i) C.S.P. (Dom.Add. 1566-79), p.202.

(ii) C.B.P., i, 834; ib., ii, 683, p.421.

(iii) ib., ii, 611, 628, 707, 1254.

Wardens who came from the South could not be blamed for seeking to return there; they were faced with a difficult job among an antagonistic people, and generally lacked the governmental assistance they felt they required. They were neglected, in exile in an administrative backwater. Accordingly they plied the government with requests for other tasks, for permission to return South, for a vacation from their duties; Carey pleaded "uppon [his] knees ... that I may be taken from hens". And when they did succeed in getting away from the borders for a time, they stayed away as long as possible - Hunsdon, for example, was a non-resident warden for many years (1).

The resentment of the men of the locality against the incomer warden, the apparent indifference of the English central government, and the resulting non-residence of some of the wardens, were all defects which ultimately stemmed from the more modern attitude towards administration taken by the English government. One cannot accept at their face value, no matter how honestly made, the assertions of the English wardens of their superior efficiency when compared with the Scots; in the circumstances they themselves could hardly have been any more efficient, and many of their statements that border disturbances were caused by the slackness of the Scottish administrators must merely cover up some of their own inadequacies. This conclusion is reinforced by the fact that the English government removed both Foster and Eure from office for inefficiency. Hence, although the English and Scots administered their frontier regions with different traditions and ideas of government controlling their actions, the result was very much the same on both sides of the boundary - the unlawful pursuits of the borderers were not curbed with

(1) C.B.P., 11, 697; Tough, p.279.

complete success.

While one feels the necessity of countering contemporary accusations of inefficiency against the Scottish wardens, it nevertheless remains true that their administrative organization was less highly developed towards centralization. This was true of Scottish administration as a whole; yet the idea of centralization, the creation of a controlled administration staffed by public servants acting in an impersonal manner, was strong throughout Western Europe in the 16th century, and it certainly did exist in Scotland, although some of the apparatus of centralized government was lacking. The idea of centralization was applied to Scottish border administration, and there are signs of development towards more efficient central control.

The Scottish government found it necessary to control internal administration as far as possible. This is clear from the amount of time devoted in the Council to debating every aspect of border affairs; and it is confirmed by the almost continuous existence of groups of men on the Council who placed the problem of the borders and of relations with England among their primary concerns. These men, such as Soot of Balwery, Otterburn of Auldham, Carnegie of Kinnaird, Bellenden of Auchnoul and Carmichael of that Ilk, were those who had already developed and put into operation the concept of impersonal service to the state. They undertook the responsibility for closely formulating border policy, and, when direct supervision of the wardens was necessary, they went to the frontier to do it; they were concerned with the relationship with England which controlled that policy, going on embassies to the English court, and frequently travelling to the border as commissioners to meet similar English specialists. The development of this specialization on the part of some members of the Scottish Council is perhaps the greatest

indication of increasing central control of border administration; but it did not produce the mass of records normally associated with centralized administration, partly because direct supervision by these men was intermittent, and partly because, owing to the frequency with which the wardens themselves attended council meetings, paper work could be cut to a minimum. Direct control of the wardens by the council was largely within the Council (i). It was not until 1579 that it was suggested that wardens should make regular reports to the Council, a suggestion which was revived in 1587 (ii). This paper work, the highest point of bureaucratic centralization, was therefore a late development in Scotland although a commonplace for the English wardens from much earlier in the century.

The provision of military assistance to the wardens is further evidence of increasing centralization. In the early part of the century the wardens were expected to find for themselves the military forces they required. It was not until 1552, when, under French influence, total centralization of government was suddenly applied to Scotland, that military assistance was provided by the government. French troops were stationed at strategic points on the frontier, commanded by men directly under government control; they were not subject to the wardens although they assisted them to maintain order. After 1560 the provision of troops was less highly centralized; they were raised, paid and supplied by the Government, and under the charge of an officer generally appointed by the Government, but they acted under the orders of the warden. This was probably the most efficient compromise that the central authorities could reach, and was continued fairly regularly until 1587,

(i) See Chap. 4, section 2, p.205.

(ii) R.P.C.S., iii, p.82; C.Scot.P., ix, p.477.

thereafter less regularly, partly because of some abuse in their use by the wardens, partly for economy, but mainly because of relaxed international tension.

On the whole the administrative machinery used to control the turbulent inhabitants of the borders remained the same throughout the century; except for the provision of military forces, there were no central administrative innovations on a large scale - the short-lived special central court set up by Maitland in 1590 was merely an extension of the Council, and reflected the interest which had always been shown by that body. Judicial raids, signatures to the General Band, and the detention of pledges, all of which formed the basic methods of internal control, were used regularly throughout the century; but although the fundamental principles of their operation remained unaltered, there is evidence to suggest that, in administrative details, each was gradually, but not continuously, developing in such a way as to emphasise the importance and power of the central authorities. Judicial raids were held more regularly by the Government and they became more highly organized; greater care was taken to see that the lieges who formed the military forces did actually turn up, or, if they failed to present themselves, that they suffered a financial penalty sufficiently great to provide for mercenaries to take their place. The judicial proceedings, which in the early part of the century were sometimes referred back to local officials, were later always under the control of the visiting central representatives. Finally, the growing complexity of the instructions given to lieutenants of the marches for carrying out these raids, and the increasing circumscription of their power by supervisors disguised as "counsellors", showed a determination on the part of the central authorities to keep this form of administration under strict control.

Similarly, although the basic principle of the General Band, that a landlord should accept responsibility for his kinsmen, tenants and servants, remained unchanged, the details of its administrative operation were made more complex to the advantage of the government. No texts of the band appear to have survived from the early part of the century, but those from 1551 onwards show increasingly detailed specification until the text of 1602 closed many of the legal loopholes of the earlier versions. Its operation was made more effective in 1587 by requiring subscribers to find both caution and surety from wealthy acquaintances for the adequate performance of their responsibilities. In much the same way the control of human pledges, once they were taken from the clans, was tightened up gradually. Greater care was taken as to who was actually accepted as a pledge, and more vigilance was exercised over the pledges once they were taken into custody. A convoy system was evolved by which they were transported under supervision to the place of their imprisonment, and the regulations governing their control while in private hands were gradually strengthened; fines were levied if the pledges escaped, and the premature release of pledges, perhaps on the authority of a single irresponsible person, was prevented by making it necessary for several persons, including councillors, wardens and lieutenants, to sign the release warrant. In 1600 a compulsory billeting order was passed by Parliament to prevent individuals refusing to accept the charge of these pledges.

The policies of the various kings and regents were based on this machinery, and a chronological survey shows increasing complexity. Angus relied on the regular use of raids by the central government, as did James V; James also introduced the supervision of wardens by central officials, and probably initiated the first attempt at a comprehensive policy of border

control. Mary of Lorraine, inspired by French administrative ideas and relying to a large extent on French officials, succeeded for a time in placing in the wardenship of the Middle march men from the central government who could easily be supervised, directed and controlled; she used the General Band and pledge system rigorously in conjunction with raids, and the continuous existence near the frontier of French military forces was the forerunner of the idea of military aid to the warden. Both Moray and Morton had a vigorous frontier policy, relying mainly on the use of raids, bands and pledges; Morton was responsible for the improved methods of pledge control. Maitland and James VI put a similar emphasis on the judicial raid and the efficient use of bands and pledges. A degree of control was exercised over the wardens, who were becoming less important and were no longer paid by the Crown. The Privy Council as a central court took an even greater interest in border affairs than it had done in previous decades.

Parts of these reigns and regencies formed the high points of efficient border administration, where centralization was most effective. But this must not be over-emphasised; there is no indication of any continuous development of administrative institutions. Each governor tended to emphasise a different facet of the system and there was no concentration on the system as a whole except for short periods towards the end of the reign of James V, during the Lorraine regency, and under James VI. What development there might be was interrupted by various disturbances such as the war with England in the 1540's, the Reformation wars of 1558-60 and the Civil war of 1567-73. Other deterrents to development were the periods of slack administration which intervened between the periods of activity. This periodic slack administration can be attributed to several causes, the main ones being, first, a sheer lack of power on the part of the Government to

control the frontier, and secondly, the lack of any desire to exercise such control for reasons of international politics. Prior to the regency of Angus, for example, both these reasons were important; Arran and Albany, tied closely to France, had no wish to create good administrative conditions on the frontier which would make things easy on the frontier; nor had they the administrative ability, as is shown by the length of time they took to subdue the Hume revolt on the East march. The active reign of Mary Queen of Scots must also be regarded as a period of slack administration. While Moray dominated international policy, as he did for the first two years of her reign, frontier administration was quite effective; his eclipse in April 1563 altered this, and, although all the apparatus of border control existed, it lacked firm and vigorous direction until Moray once more regained a measure of control after the murder of Rizzio (1). Between the vigorous administration of Morton and that of Maitland and James VI, was again a period in which little effective control was exercised over border affairs; the Scottish government, dominated by Francophile policies under D'Aubigny and, later, Arran, seemed almost to encourage frontier turbulence with the intention of antagonizing England.

These periods of neglect intervening between the periods of active administration, taken in conjunction with the periods of warfare in Scotland, show why there was no continuous development, centralized or otherwise, either in the machinery of frontier control as a whole or in its constituent parts. Occasionally the Scottish government was unable to exercise control; more

(1) Lee, Moray, pp. 93-4, 115, 171.

frequently, in the light of its foreign policy and commitments with countries more directly concerned with the ebb and flow of international politics in Western Europe, it was unwilling to exercise control. What is really surprising is not the lack of continuity in administrative development but the fact that, in its periods of vigorous action, the Government was able to develop the institutions of administration as far as it did.

The same factors which influenced the tendency towards centralization of the internal administrative system also affected the development of the international administrative organization. But whereas Scottish internal administrative machinery developed as a part of the general Scottish administrative system and participated in all its difficulties and setbacks, the frontier international machinery evolved in contact with similar machinery in England. The English attitude to frontier negotiation and the methods by which it was to be conducted therefore affected the Scottish attitude; and in as much as the English tended to centralize their negotiating machinery, this tendency was reflected to some extent in Scotland, as it was essential, in the eyes of both powers, that negotiation should be done by people of a similar social position and standing in a similar relationship to their central governments. Under this influence the Scottish international machinery showed a steadier trend towards centralization; this was particularly true after 1560, when the two Protestant states, both facing the hostility of Catholic powers on the Continent, found it more desirable to control their international relationships.

The post-renaissance conception of the State with its emphasis on increased centralization implied, on the frontier, less use of the local negotiating officials, with an increased use of central officials for the performance of frontier business. Several factors tend to confirm this suggestion that the wardens were declining in importance towards the end of the century,

particularly on the English side of the frontier. The difficulty the English wardens had in acting without central approval of their actions indicates the extent of control the Government wished to have over frontier business. But, at the same time, the wardens seldom got from the Government the material and financial assistance they considered to be the minimum necessity for the exercise of their duties; and this was paralleled by the ease with which some wardens could absent themselves from their march and leave their business in the hands of deputies. The implication is that, while the English Government was extremely careful to keep a close watch on all details of frontier negotiation, it was not particularly interested in these negotiations being carried out by local frontier officials; the wardens were being circumvented as negotiating officials and replaced by others who, in the light of the changed international situation of the end of the century, were more in touch with central opinion than the wardens, obsessed with the importance of minute infractions of the frontier, could be.

This decline of the English warden as an international official was paralleled on the Scottish side of the frontier. It is quite clear from the description of the office in Balfour's Practicks that he regarded the Scottish wardens primarily as local officials concerned with internal administration; and this is paralleled by the development of the wardens' justiciary powers (1). After 1587 the wardens received no salary and were no longer a burden on the Exchequer, the alternative emoluments they received being largely dependent on their own activities; and from about the same time

(1) See Chap. 3, section 3, pp. 143 et seq.

the Government ceased to provide military forces to assist the wardens. There was also a tendency, on the East march at least, for deputies to do much of the business. This is ample evidence of the decline of the wardenship as an office; but the Scots wardens remained the important and powerful men of their marches and their influence was of paramount significance on the frontier. But their importance was as individuals, not as holders of the office of warden, and it was as individual members of the Privy Council, and by their personal power, that they wielded their influence.

The increasing importance of central officials in frontier negotiations is shown by developments in the duties of two types of officer, the international commissioners and the ambassadors. The post-renaissance development of diplomacy increased the importance of the ambassador considerably, and made necessary the permanent residence of the ambassadors of one country within the bounds of another. From the middle of the century onwards there were a series of English ambassadors virtually permanently resident in Scotland, men such as Randolph, Throckmorton, Killigrew and Bowes. While Scotland never appointed a resident ambassador to England, perhaps an indication of administrative backwardness, there were, towards the end of the century, a fairly continuous stream of embassies to London for the discussion of important affairs. The business discussed by ambassadors had always included difficult affairs on the frontier, but these began to be a more important part of their negotiations.

The origin of this development is probably to be found in the 1550's when Antoine de Noailles, the resident French ambassador in England, and Nicholas Wotton, the English ambassador in France, dealt in detail with Anglo-Scottish frontier matters as a normal part of their duties. After 1560 the English ambassadors in Scotland found themselves more and more involved

in border affairs. In 1562 Randolph had to deal with the problem of the breakdown of days of truce on the West march, where the two wardens, Dacre and Terreglis, found themselves unable to act together, largely for personal reasons. This type of problem faced ambassadors until the Union in 1603. They also had to deal with the diplomatic negotiations arising out of extraordinary border affairs, such as the Reidswyre raid, the murder of Sir Francis Russell and the rescue of Kinmont Willie Armstrong. Scottish ambassadors in England played a less important part in the conduct of border affairs, but simply because they were temporary officials resident in London for a short period only. It is clear from their instructions that they were empowered to negotiate on general and specific items of frontier importance; Carmichael and Murdochairny, for example, received such instructions in 1588 and 1593 (1).

The increasing importance of ambassadors did not necessarily reduce the wardens' powers. Their main function was to try to provide the general atmosphere of goodwill necessary for efficient frontier administration; occasionally they took over at central level the discussion of local problems for which the wardens, given time, might have been able to negotiate solutions for themselves. But the nature of their position prevented them from reducing the wardens' status in their day-to-day administration - negotiation over straightforward bills and the collection and distribution of redress money. Those aspects of the wardens' powers were threatened rather by a new attitude towards border commissions.

The function of border commissions was to codify the regulations under which the wardens worked, and to supervise the activities of the wardens

(1) C.Scot.P., ix, p.549; Warrender, ii, pp.212-13.

for a while with reference to specific cases of redress. In the last two decades of the century the commissioners themselves began to take a more active part in the proceedings, judging the bills and accepting responsibility themselves for their redress. On these occasions the Scottish Government took over completely the other tasks of the warden connected with these bills - the delivery of pledges, the arrest of the malefactors, and the collection of the redress from them or from those legally held to be responsible for them; in doing this the Government chose rather to deal directly with the local inhabitants of the marches than through the wardens. This direct action, although not continuous, did diminish seriously the powers of the wardens.

By the end of the century, therefore, the centralization of Scottish border administration had advanced to a significant extent; the importance of the local international official was declining and he was being replaced by central officials. The king pin of the system was the lay central official; the growth of a class of these men is one of the main features of 16th century Scottish administrative history which is yet to be examined in detail and extends far beyond the sphere of frontier administration. The representatives of this class who interested themselves in border affairs existed early in the century; they appear to have been landed men originally of fairly low status, with few ties with the nobility, ^{and} whose landed estates were not sufficiently large to prevent them from giving themselves wholeheartedly to a career of administration on behalf of the Crown. These features characterized such men throughout the century. None of them was employed exclusively on border affairs; they were too precious to the Scottish Government as general administrators. But specialization had advanced to such an extent by the end of the century that one of them, John Carmichael of that ilk,

spent most of his administrative career of almost 30 years dealing with frontier problems.

Carmichael was a relative of Morton, and the successful beginning of his career was largely due to the help and encouragement of the Regent. He first became prominent during the civil war when he was in command of a small troop of horse. He was an efficient officer, and was appointed by Morton on the cessation of hostilities to the office of Keeper of Liddesdale. This area, the most disturbed in the borders at the time, was regarded primarily as a military problem, and he was given a troop of 40 light horsemen to help him to subjugate the troublesome border clansmen. The task had administrative responsibilities too, and his success in this recommended him as the suitable recipient of an English pension (1). He rapidly brought the region under control. By February 1576 his company could be reduced by half and his administrative efficiency was praised by English wardens even during the tension raised by the disturbance at Reidswyre; later, Scrope was to recall how Carmichael used to deliver Scottish offenders personally to him at Carlisle castle (11). But his position depended almost entirely on Morton's authority, and when that authority was reduced, Carmichael's effectiveness was lessened owing to local opposition; and when Morton fell from power Carmichael fell with him, his estates forfeited and his office given to Gosford.

In October 1585 he returned to Scotland with the other banished Lords, and his abilities, his family tie with Maitland, and the contacts he had made when in England, made him a useful executant of the new pro-English

(1) C.Scot.P., v, p2.

(11) C.B.P., i, 170.

policy of the Crown; it was to him, for example, that the English pension for James VI was sometimes delivered. He became a Privy Councillor in 1588, and throughout his career attended council meetings as regularly as his other official duties would allow him. He was employed as an ambassador to England on at least two occasions, and he was one of those who accompanied the king to Denmark for his marriage. His closeness to James VI is shown by his appointment in 1592 as Captain of the King's Guard, and in this capacity he was one of those responsible for the discovery of the 'Spanish Blanks'. He renewed his connection with frontier administration in 1588 when he was appointed warden of the West march; this area was now the most disturbed on the borders owing to the excesses of the feud between the Maxwells and the Johnstones, and was troublesome to the government owing to Maxwell's open support of Roman Catholicism and his readiness to plot with Spain. Carmichael's appointment was welcomed by the English, and he appears to have brought the march rapidly under control. He resigned in 1592, ostensibly for reasons of health and to take up his appointment as Captain of the Guard, but actually because of the financial ruins the office had involved him in, and because of the impending fall from power of his relative, Maitland. He was a border commissioner in 1588, 1591 and 1596, and he was responsible for the organization of judicial raids, particularly those of 1597. As a Privy Councillor he was often required to discuss border affairs at the highest level, and he was one of those who formed the special court or committee set up in 1590 to deal with border offences. In 1597 he was specially employed by James to tighten up procedure on the borders after the meetings of border commissioners; it was he who undertook the task of seeing that the local Scottish officials carried out fully the obligations which had been laid upon them. His final appointment, late in 1599, was again to the wardenship of the West march,

where, after a short period of efficient administration, he was murdered by a disaffected borderer.

The details of Carmichael's career are unique, but he was a fine example of the type of man necessary to make a success of central government - efficient, eager to act in any way anywhere for the Crown, willing to work for very little reward. He was one of several. The significance of his career for the borders lies in the responsibility he took as a central official for the ordinary, day-to-day working of frontier affairs; he was a symbol of the partial supersession of officials drawn from the locality and the increasing power of the Scottish central government.

The diminution of the wardens' position was not solely a matter of developing administration. From 1573, and particularly from 1586, the governments of England and Scotland were sufficiently friendly to eliminate the possibility of war between them. The more dangerous aspects of the international frontier problem were diminishing; border incidents of the type which formerly led to very strained relations and the threat of open warfare now merely caused slightly increased tension which would be resolved by normal diplomatic channels. Recurring small scale border transgressions concerned the governments much less than formerly as there was no danger in them. It was this fact as much as the evolution of central administration which reduced the international importance of the wardens when compared with the position they had held earlier in the century. They remained of importance in the internal administration of their marches, but here, too, they were subjected to 'interference' from the central government, and their former independence of action was severely curtailed.

In the last decade of the century the maintenance of internal law and order in the marches, and the provision of effective administration

under central control was the major concern of both governments, not local negotiation to resolve minor frontier infringements. This trend, the diminishing importance of the international aspects coupled with the increasing importance of internal administration, was caused by the decrease of international tension between the two frontier states. The problem of maintaining order in that difficult region had almost become one of pure administration. This foreshadowed the post-Union situation, where the international aspects of the problem had been eliminated, and a problem of frontier control involving two states became a domestic problem of administering the unruly Middle Shires of King James's "united kingdom".

Sheriffs of the Border Sherifffdoms, 1513 - 1603

1. Berwickshire

The office of sheriff was hereditary in the family of Hepburn, Earl Bothwell (i).

Patrick Hepburn, 3rd Earl of Bothwell, had sasine of office in October, 1513, while still a minor. Owing to the length of his minority and to his troubled political career, during which he was several times imprisoned and banished, the duties of sheriff were carried out mainly by deputies, at least until 1541 and probably later; he was still sheriff in 1554, and died in 1556 (ii). James Hepburn, 4th Earl of Bothwell, had sasine of office in 1556: the office was forfeited in 1567 (iii).

Alexander, 5th Lord Hume, was granted the office hereditarily in 1567 (iv); a member of the Marian party, he forfeited the office in 1573 on the triumph of Morton.

Archibald, 8th Earl of Angus, was granted the office hereditarily in 1573; he was active in office until his forfeiture in 1581 (v).

Francis Stewart, Earl of Bothwell, was granted the office hereditarily in 1581, and retained it until his forfeiture in 1591 (vi).

Ludovic Stewart, Duke of Lennox, was granted the office in 1591, but resigned it the following year (vii).

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- (i) R.M.S.ii, 3635.
(ii) Ex.R., xiv, p.616; A.D.C., p.602; R.S.S., iv.2572.
(iii) Ex.R., xviii, p.609.
(iv) H.Mss.C.R., xii, 8, p.111.
(v) R.M.S., iv, 2152; Ex.R., xx, p.57.
(vi) R.M.S., v, 218; Ex.R., xxi, p.616.
(vii) R.M.S., v, 1888.

Alexander, 6th Lord Hume, received the office heritably in 1592, on its resignation by Lennox (i).

Walter Scott of Branzholme received the office when the barony of Hailes passed from Lennox to him in 1594; but Alexander, Lord Hume, was still acting as sheriff in 1599, and there is no evidence that Scott carried out any shrieval duties (ii).

George Hume of Spott acted as sheriff in 1599 (iii).

2. Dumfriesshire

The office of sheriff was hereditary in the family of Crichton of Sanquhar (iv).

Robert Crichton, 3rd Lord Sanquhar, succeeded his father in November, 1513. He died in 1520 (v).

Robert Crichton, 4th Lord Sanquhar, was under age when he succeeded his father in 1520, and the duties of sheriff were carried out by his tutor, Ninian Crichton of Belliboicht (vi). He himself received sasine of the office in 1534 (vii) but died early in 1536 still, apparently, under age.

William Crichton, 5th Lord Sanquhar, brother of the above, was under age when he succeeded to office; the duties continued to be carried out by Ninian Crichton of Belliboicht (viii). He was killed in 1550, and apparently held office as sheriff before that date (ix).

- (i) R.M.S., v, 2179.
- (ii) R.M.S., vi, 166; R.P.C.S., v, p.748.
- (iii) R.P.C.S., vi, pp.56-9.
- (iv) R.M.S., ii, 790.
- (v) Ex.R., xiv, p.523.
- (vi) R.S.S., i, 3104; A.D.C., p.412.
- (vii) Ex.R., xvi, p.574.
- (viii) "Sheriff Court Book of Dumfries (1537-8)" in D. & G. Trans. 3, v, p.97.
- (ix) R.S.S., iv, 1529; Scots Peerage, iii, p.227.

Robert Hamilton of Briggs was appointed sheriff for one year in November, 1551 (i).

Robert Crichton, 6th Lord Sanguhar, was under age; his uncle and tutor, James, 4th Lord Fleming, was appointed sheriff-warder in February 1551/2, who apparently acted until 1558, when he himself received sasine of the office (ii). He died in 1561.

Edward Crichton, 7th Lord Sanguhar, brother of the above, succeeded and was acting as sheriff in 1566 (iii). He died in 1569.

Robert Crichton, 8th Lord Sanguhar was under age; his uncle and tutor, William Crichton, acted as sheriff-warder at least from 1574 to 1583 (iv). He himself acted as sheriff from 1586 (v). In 1602 he resigned his shrieval duties to David Crichton of Lugtown, as he was now employed by James VI as a political agent on the continent (vi).

3. Peeblesshire

The office of sheriff was hereditary in the family of Hay of Yester.

John Hay, 3rd Lord Yester (Hay of Hopprew) received sasine of office in November 1513 (vii). In 1530 he was removed from office in favour of Malcolm, 3rd Lord Fleming; after prolonged litigation he was restored to office in April, 1543, but died shortly after (viii).

(i) R.S.S., iv, 1424.

(ii) ib., iv, 1529; T.A., x, p.285; Ex.R., xix, p.419

(iii) R.P.C.S., i, p.464.

(iv) R.P.C.S., ii, p.357; ib., iii, 212; "Sheriff Court Book of Dumfriesshire (1577-83)", in D.&G.Trans., 3, xii.

(v) Ex.R., xxi, p.616; R.P.C.S., iv, p.614; ib., v, p.338.

(vi) R.M.S., vi, 1375; Scots Peerage, iii, p.230.

(vii) Ex.R., xiv, p.521.

(viii) R.S.S., ii, 768; A.D.C., p.525; see also Chap.1, part 2a, pp.27-8.

John Hay, 4th Lord Yester, was sheriff in July, 1543, and remained in office until his death in 1555 (i).

William Hay, 5th Lord Yester, received gift of the office for one year in 1556 (ii). He was active in office from 1577 until his death in 1586 (iii).

William Hay, 6th Lord Yester, succeeded his father; he died in 1591 (iv).

James Hay, 7th Lord Yester, succeeded his brother in 1591, and was active in office until the Union of the Crowns (v).

4. Roxburghshire

The office of sheriff was hereditary in the family of Douglas of Cavers.

James Douglas of Cavers had sasine of office in 1508; he was in office in 1523 and 1531 (vi).

James Douglas of Cavers had sasine of office in 1545; he remained in office at least until 1555 (vii). He died in 1558.

William Douglas of Cavers became sheriff in March, 1559, and acted continuously as sheriff until 1589 (viii).

James Douglas of Cavers, son of the above, acted as sheriff from 1590 (ix).

(i) A.D.C., p.530; Ex.R., xviii, p.499; R.S.S., iv, 2729.

(ii) R.S.S., iv, 3126.

(iii) Ex.R., xx, p.502; ib., xxi, p.616; R.P.C.S., iii, p.563; ib., iv, p.25.

(iv) R.M.S., v, 1830.

(v) ib., v, 1872; R.P.C.S., v, p.150; ib., vi, pp.56, 68, 333.

(vi) Ex.R., xiii, p.659; H.Mas.C.R., xii, 8, p.179; A.D.C. p.362.

(vii) Ex.R., xviii, p.388; A.D.C., pp.615, 626; R.S.S., iv, 3036.

(viii) R.S.S., v, 577; R.P.C.S., ii, pp.249, 370; ib., iii, pp.600, 629; ib., iv, pp.63, 132, 183, 272, 381, 407; Ex.R., xx, p.579; ib., xxi, p.616.

(ix) R.P.C.S., iv, pp.809, 561; ib., v, p.81; ib., vi, pp.4, 23, 56, 203; Ex.R., xxiii, p.64.

5. Selkirkshire.

The office of sheriff was hereditary in the family of Murray of Falahill (1)

James Murray of Falahill had sasine of office in March, 1514. He was in office in 1518; he died before 1535 (ii).

Patrick Murray of Falahill (also of Hangitschaw) was active in office at least from 1543 to 1562 (iii). He died early in 1578.

Patrick Murray of Falahill, grandson of the above, was active in office from 1578 to 1599 (iv). He died in 1601 (v).

John Murray of Falahill, son of the above, was sheriff in 1603 (vi).

(1) R.M.S., ii, 3388.

(ii) Ex.R., xiv, p.540; A.D.C., pp.109-10; R.M.S., iii, 1466.

(iii) A.D.C., pp.530, 533, 516; T.A., xi, p.106.

(iv) Ex.R., xxi, p.42; ib., xxi, p.62; R.P.C.S., iii, pp.63, 87; ib., iv, pp.809, 811; ib., vi, pp.56-9.

(v) Scots Peerage, iii, p.504.

(vi) R.M.S., vi, 1461.

APPENDIX 2Border Baronies in the 16th Centurya) Baronies within Sheriffdom of Berwick

BLACKADDER. This barony belonged to Robert Blackadder in 1452 (i). Before 1527 it was divided between the daughters of Andrew Blackadder, Margaret and Beatrice, who each received sasine of half the barony (ii). Beatrice, the elder, married John Hume, son of David Hume of Wedderburn, to found the family of Hume of Blackadder; they received confirmation of their lands in 1543. Margaret married Robert, a younger brother of John Hume, and they received confirmation of their half of the barony in 1541 (iii). In 1554, Alexander Lord Hume and William Maitland of Lethington were granted the wardship of this half on behalf of Robert's son David, who himself took sasine in 1572 (iv). Between 1599 and 1604, this David Hume divided his half barony between his three daughters, Marjory, Elizabeth and Alison, who all married Humes - Peter, David and Alexander respectively (v). In 1616-17 these three couples resigned their interest in the fragmented barony to Sir John Hume of Blackadder, now the holder of the senior portion, who thus reunited the barony into a single unit (vi).

BLYTH. In 1508 William Maitland of Lethington had sasine of the lands of Blyth and Thirlestane; these reverted to the crown for non-entry of heir (Maitland's legitimacy apparently being disputed) and were granted

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- (i) R.M.S., ii, 585.
(ii) Ex.R., xv, p.647.
(iii) R.M.S., iii, 2417, 2862; Scots Peerage, iii, p.281.
(iv) R.S.S., iv, 2803; Ex.R., xx, p.425.
(v) R.M.S., vi, 1540-1, 1290.
(vi) ib., vii, 1509, 1739.

in 1509 as a barony to Alexander Lauder, Provost of Edinburgh (i). Maitland was, however, given the privilege of buying back the lands within seven years, but was killed at Flodden. His son, Richard Maitland, appears to have retained lands within the barony, which were confirmed to him in 1537 and 1552 (ii). The debt on Maitland's estates was not cleared until 1556. In 1559, Richard resigned the barony in favour of his second son, John (iii); possession was confirmed to Richard in 1564 and 1567 (iv). In March 1581, Richard Maitland sold the barony to John Maitland but John, being forfeited in 1571, had no rights in the estates and Parliament, in November 1581, ratified its grant to James Hume of Coldenknows (v). In May 1584, Maitland's forfeiture was rescinded and his estates, including this barony, restored to him. It was regranted to him in 1587 and, along with other lands, made into a new barony of Thirlestane (q.v.) with the caput at Thirlestane, which was in turn granted to Maitland in regality (vi). The barony of Blyth then gradually disappeared from the official records; in 1589 certain lands were described as being 'ab antiquo in baronia de Blyth, tunc in baronia de Thirlestane', while in 1594 Thirlestane itself was equated to 'terras et baroniam antiquitus baroniam de Blyth vocatas' (vii).

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- (i) Ex.R., xiii, p.658; R.S.S., i, 1733; R.M.S., ii, 3348.
 - (ii) R.M.S., iii, 1696; ib., iv, 698; R.S.S., iv, 1507.
 - (iii) Scots Peerage, v, p.292; R.S.S., v, 719.
 - (iv) R.M.S., iv, 1504; A.P.S., ii, 549.
 - (v) R.M.S., v, 156; Scots Peerage, v, p.299; A.P.S., iii, 270.
 - (vi) A.P.S., iii, p.318; R.M.S., v, 1306.
 - (vii) R.M.S., v, 1659; ib., vi, 73.

BONOLE and PRESTON. These baronies were Douglas lands; they always seem to have been regarded as a single unit whether described as two baronies or as a single regality. In 1508 Bonole belonged to George Douglas, Master of Angus, and in 1521 Archibald, 6th Earl of Angus took sasine of the barony and regality of Bonole (1). The lands were forfeited to the Crown in 1528 and the financial profits of the baronies were given to George, Lord Hume; his brother, John Hume, Abbot of Jedburgh, was made bailie of Bonole barony in 1531, and he paid the farms of both baronies into the Exchequer at least until 1536 (11). In 1534 Bonole was granted as a barony to James Stewart, eldest natural son of James V; two years later the baronies of Bonole and Preston were given to James Stewart, second natural son of James V, and incorporated with other former Douglas lands into the baronial complex of Tantallon. This reverted to the Crown in 1540. (111). The baronies were restored to Angus in 1547. Archibald, 8th Earl of Angus, who succeeded his father David, 7th Earl, received sasine in 1559 of the baronies and regality of Bonole and Preston; his tutor James, Earl of Morton, had the gift of ward and nonentries in 1557 and 1561. Angus forfeited the lands in 1581 and the baronies were later (probably after 1584) given to John Maitland of Thirlestane (iv). Angus was restored in 1585; William, 9th Earl, received sasine of the baronies and regality in 1589 and William, 10th Earl, in 1591 (v). The latter forfeited his estates in 1593, and Bonole and Preston were granted as two separate baronies to Ludovic, Duke of Lennox, in 1594. Angus's forfeiture was reduced in 1597,

(1) R.S.S., 1, 1631; Ex.R., xv, p.592.

(11) R.M.S., 111, 647; R.S.S., 11, 339, 896; T.A., xvi, p.480.

(111) R.M.S., 111, 1425, 1620, 2233.

(iv) ib. iv, 146; Ex.R., xix, p.441; R.S.S., v, 246, 929; A.P.S., 111, pp. 228, 366.

(v) Ex.R., xxii, pp.436, 458.

and 1602, the baronies were confirmed to him (1).

BOWNE. Jasper Cranston of Corsby resigned this barony in favour of his son John in 1537; Jasper died in 1559. In 1573 the barony was granted to the deceased John's son George, having technically been in the king's hands since 1559 for non-entry; later in the year it was confirmed to George and his son Thomas (11).

BUTTERDENE. The lands of Butterdene were granted to George Ellem in 1489. In 1541 they were erected into a barony for Peter, son of Alexander Ellem, of Butterdene. In 1587 it passed to Peter's son, John, who still held it in 1608 (111).

COCKBURNSPATH. The lands were given to Queen Margaret on her marriage to James IV, and in 1529 they belonged to Henry, Lord Methven, her third husband (iv). In 1541 they were granted as a barony to Alexander Sinclair, brother of Sir William, of Roslin; in 1544 they were in the Queen's hands as the escheat of Sir George Douglas of Pittendriech, who must have had some right to the lands although Sinclair did not sell them to him until 1546(v). Douglas took possession after a lawsuit involving George Lord Hume, who also claimed the lands (vi). David Douglas, later 7th Earl of Angus, received sasine in 1553, and on his death in 1559 the barony passed to James, Earl of Morton, who forfeited it in 1566 (vii). In 1573 Archibald, Earl of Angus had sasine, who forfeited it in 1581, it being granted to

- (1) R.M.S., vi, 192, 1283; A.P.S., iv, p.124.
- (11) R.M.S., 111, 1731; ib. iv, 2137, 2160; R.S.S., v, 553.
- (111) R.M.S., 11, 1826; ib., 111, 2452; ib., v, 1422; ib. vii, 2.
- (iv) R.M.S., 11, 2721; ib., 111, 840.
- (v) ib., 111, 2325; ib., iv, 86; R.S.S., 111, 924.
- (vi) Douglas Book, 11, p.168.
- (vii) Ex.R., xviii, p.552; R.S.S., v, 772, 2704.

James, Earl of Arran, in 1584 (i). Angus was restored in 1585. William, 9th Earl, had sasine in 1589, but on the forfeiture of William, 10th Earl, in 1594, it passed to Ludovic, Duke of Lennox. The forfeiture was reduced in 1597 and the barony was confirmed to Angus in 1602 (ii).

COLDINGHAM. This barony belonged to the Benedictine priory of Coldingham. In 1466 Alexander Lord Hume held the hereditary office of bailie, which descended in his family (iii). Francis Stewart was made Commendator of Coldingham in 1565, but he exchanged it in 1566 for Kelso; in 1567 John Maitland was made Commendator, but later forfeited his position (iv). In 1576 Alexander Hume of Manderston was Commendator; it was ratified to him in 1585, but Maitland and Stewart (now Earl of Bothwell) did not abandon their claims to the office. Bothwell appears to have obtained possession of the office in 1587 (v). Maitland held the office in 1590. In 1606 a temporal lordship was erected from the priory lands for Alexander Lord Hume (vi).

CRANSHAW. The lands of Cranshaw were given to John de Swinton in 1401 by Archibald, Earl of Douglas; they remained in that family, being erected, with the addition of the lands of Swinton (previously within the barony of Coldingham) into a barony for Robert Swinton in 1598 (vii).

(i) Ex.R., xx, p.431; R.M.S., v, 704.

(ii) Ex.R., xxii, p.436; R.M.S., vi, 192, 1283.

(iii) R.M.S., ii, 859, 2162.

(iv) R.S.S., v, 2182, 3245, 3431; R.M.S., iv, 2430, 2481.

(v) R.M.S., iv, 2634; A.P.S., iii, p.387; C.S.P., i, 393, 516; Lee, Maitland, pp.78-9.

(vi) R.M.S., v, 1880; A.P.S., iv, pp. 360-1.

(vii) R.M.S., ii, 1645; ib., vi, 737.

DRYBURGH. This barony belonged to the Premonstratensian abbey of Dryburgh. In 1527 the town of Dryburgh was made a burgh in barony in favour of James, Abbot (1). From 1541 the abbey was controlled by secular commendators, Thomas Erskine, John (3) Erskine and David Erskine; in 1584 David Erskine was deprived of office and William Stewart of Caverston was granted the abbey 'cum privilegia regalitatis'. David Erskine was restored in 1585; he demitted office in 1608 in favour of Henry Erskine. In 1650 James, Earl of Hume was described as hereditary bailie, and it is possible that his predecessors held the office in the 16th century (11).

DUNS. This barony belonged to the family of Hume of Ayton; in 1490 the town of Duns was made a burgh in barony for George Hume and his son John, and in 1587 the town's market day was changed at the suit of William Hume. In 1605 his son Patrick Hume of Ayton held the barony (111).

EARLSTON. This barony was erected in 1489 for John Hume of Whitrig from lands formerly belonging to Archibald, 5th Earl of Angus; his son Mungo Hume of Earlston had sasine in 1493 (iv). John Hume of Coldenknows had sasine in 1523, and he still retained it in 1564; his son James Hume had sasine in 1576, and he in turn transferred the barony to his son John in 1592 (v).

EDINGTON. The lands of Edington were made into a barony for John Edington and his son David in 1542; in 1550 David sold lands within the

(1) R.M.S., 111, 430.

(11) Dryburgh, pp. xxiii - xxxi, 374; R.M.S., v, 737.

(111) R.M.S., 11, 1937; ib., vi, 1628; R.P.C.S., iv, p. 206.

(iv) R.M.S., 11, 1907; H.M.S.S.C.R., xii, 8, p. 119.

(v) Ex.R., xv, p. 609; ib., xx, p. 506; R.M.S., iv, 1519;

ib., v, 2168.

barony to James Ramsay, son of Nicholas Ramsay of Dalhousie. This was followed in 1594 by the sale of the entire barony by Thomas Edington to George Ramsay of Dalhousie, who had his title confirmed in 1603 (1).

FOULDEN. This barony belonged to the Ramsays of Dalhousie. Nicholas Ramsay had sasine in 1517 after the death of his father Alexander at Flodden; he resigned it in favour of his son George in 1528, who succeeded his father before May 1555 (ii). His son John had sasine in 1581, and the barony was confirmed to him as part of the barony of Dalhousie in 1589; his nephew, George Ramsay, had sasine in 1593 (iii).

GORDON. This barony was created in 1510 for Alexander, 3rd Earl of Huntly, and confirmed to him in 1516 on the forfeiture of Alexander Lord Hume who had held the lands from him (iv). His grandson, George, 4th Earl, had sasine in 1537, and George, 5th Earl, held the 'lordship of Gordoun' in 1567. In 1579 the lands of the barony were the subject of a judicial inquiry (v).

GREENLAW-REDPATH. The lands of Greenlaw were granted in 1462 to Thomas de Cranstoun and erected into a barony; in 1511 the barony of Greenlaw-Redpath was granted to Andrew, son of William Redpath. Andrew died before September, 1529, when his lands were in the King's hands through wardship for his son William (vi). In 1545 William Redpath had sasine of the lands. The barony was granted in 1595 to George Hume of Spott on the resignation

(1) R.M.S., iii, 2792; ib., iv, 651; ib., vi, 72, 1432.

(ii) Ex.R., xiv, p.592; ib., xviii, p.584; R.M.S., iii, 590; Scots Peerage, iii, p.94.

(iii) Ex.R., xxi, p.446; ib., xxii, p.476; R.M.S., v, 1712.

(iv) R.M.S., ii, 3416; ib., iii, 98; R.S.S., ii, 1686 (p.238).

(v) Ex.R., xvii, p.735; R.S.S., v, 3459; R.P.C.S., iii, p.130.

(vi) R.M.S., ii, 529, 3616; R.S.S., ii, 337.

of William Redpath "baro diete baronie", and in 1606 became part of the baronial complex of Dunbar (i).

HALIBURTON. The 'dominium' of Haliburton belonged to Patriok, 2nd Lord Haliburton of Dirleton in 1451, being linked with the lands of Lambden barony (q.v.). It descended to Patrick, 5th Lord Haliburton, who died in 1507 leaving three daughters (ii). The eldest, Janet, married William 2nd Lord Ruthven; she had sasine of a third of the barony in 1519, and this portion descended to her son, Patrick Lord Ruthven, who held it in 1565 (iii). It remained in the Ruthven family until forfeited after the Gowrie conspiracy, when it was granted, in 1600, to Thomas Erskine (iv). The second daughter, Marjory, married George Lord Hume; a third of the barony passed to him and was incorporated within the Hume complex (v). The third daughter married George Ker of Fawdonsyde, and a third of the barony descended in this family until 1610, when George Ker resigned his portion in favour of Thomas, Viscount Fenton, who already possessed the senior (Ruthven) portion. In 1618 the barony was entirely reunited, Alexander Earl Hume having resigned his portion, and included in the baronial complex of Fenton (vi).

(i) Ex.R., xviii, p.382; R.M.S., vi, 293, 1773. The above seems to be the descent of the lands of this barony, but it is significant that some of the lands also appear as part of the Hume baronial complex (R.M.S., iii, 1480; ib., v, 1382; ib., viii, 363).

(ii) R.M.S., ii, 437; Scots Peerage, iv, p.337.

(iii) Ex.R., xiv, p.620; R.M.S., iv, 735, 1176; R.S.S., v, 2020.

(iv) R.M.S., vi, 1095.

(v) ib., iii, 1480.

(vi) ib., vii, 390, 1859.

HILTOUN. This barony was possessed by Cuthbert Lord Kilmaiveris in 1498, who later became 2nd Earl of Glencairn; in 1540 he sold it to George Hume of Wedderburn, who was killed at Pinkie, 1547. In 1548 Alexander, 4th Earl of Glencairn had the gift of the non-entries of the barony (i). John Hume of Blackadder had a similar gift in 1559, and David Hume of Wedderburn in 1564; this latter had sasine of the barony the following year, and in 1575 his son George Hume had sasine (ii).

HUME. In 1450 this barony belonged to Alexander Hume of Hume, later 1st Lord Hume; he and his son Alexander added further lands and baronies until in 1510 Alexander 3rd Lord Hume possessed an extensive baronial complex. He forfeited the lands in 1516, which were restored to his brother George, 4th Lord, in 1522 (iii). The complex was confirmed to him in 1535 and 1538, and continued to be held by the Lords Hume for the remainder of the century (iv).

HORNDEN. This barony was erected in 1597 for George Hume of Wedderburn from the lands of the barony of Hutton (q.v.) and other lands resigned by Sir George Ogilvy of Dunlugas and Robert Logan, 7th of Restalrig (v).

HUTTON. The lands of Hutton and Hornden belonged to Patrick Hume of Fast-castle in 1507; in 1516 his three grand-daughters, Katherine, Elizabeth and Alison (daughters of his son Cuthbert) each received sasine of a third of these lands (vi). Before 1539 Katherine died and Elizabeth was the senior

- (i) R.M.S., ii, 2416, 3190; ib., ~~xxx~~^{lxx}, 2171; R.S.S., iii, 2944.
(ii) R.S.S., v, 610, 1723; Ex.R., xix, p.544; ib., xx, p.477.
(iii) R.M.S., ii, 388, 3406; Scots Peerage, ix, p.458.
(iv) R.M.S., iii, 1480, 1764; Ex.R., xxi, p.477; H.M.S.S.C.R., xii, 8, p.97.
(v) R.M.S., vi, 618.
(vi) ib., ii, 1773, 3169; Ex.R., xiv, p.590; Scots Peerage, ii, p.8.

of the two heiresses of Fastoastle; she had married Sir Robert Logan, 5th of Restalrig about 1533 and in 1539 her half of the lands of Hutton and Hornden were erected into the barony of Hutton for him (i). Robert Logan, 7th of Restalrig received sasine in 1576; he resigned it in 1597 (ii). The younger heiress Alison married Sir Walter Ogilvy of Dunlugas; his son Sir George resigned his half share in 1597. Both parts of the lands were re-united and the barony of Hornden (q.v.) created, Hutton disappearing in the process.

LADYKIRK (Eister Upsatlingtoun). In 1490 James Hering of Cluny received this barony from his father David Hering of Glasgoun; but the following year it was incorporated within the baronial complex of Hume for Alexander 1st Lord Hume (iii). After the forfeiture of Alexander 3rd Lord Hume, it was granted in 1517 to Alan Stewart of Upsetlingtoun. It was restored to George 4th Lord Hume and remained within the Hume complex until 1591, when it was sold to Alexander Hume of Huttenhall (iv).

LAMBDEN. The lands of this barony belonged in 1451 to Patrick 2nd Lord Haliburton of Dirleton, being linked with the lands of Haliburton (v). They underwent the same process of division (q.v.).

LANGTOUN. In 1510 this barony was granted to Alexander Cockburn, son of Sir William Cockburn of Langtoun; his son, James Cockburn, had sasine in 1513. It belonged to his son, Alexander Cockburn, in 1542 (vi). In 1574 William Cockburn took sasine, and his son, William, received confirmation of

(i) R.M.S., iii, 2057.

(ii) Ex.R., xx, p.498; R.M.S., vi, 618.

(iii) R.M.S., ii, 1995, 2050.

(iv) R.S.S., i, 2887; R.M.S., iii, 1480; ib., v, 1963.

(v) R.M.S., ii, 437.

(vi) ib., ii, 3442; ib., iii, 2571; Ex.R., xiv, p.516.

it in 1595 while still a minor (i).

MORDINGTON. This barony was part of the regality of Dalkeith belonging to James, 3rd Earl of Morton; in 1540 he resigned the regality in favour of Robert Douglas of Lochleven, but in 1543 this was annulled by the Lords of Council, and it was regranted to James Douglas, son of George Douglas of Pittendreich, who had married Morton's daughter, Elizabeth, and who in 1550 succeeded as 4th Earl of Morton (ii). The regality, including this barony, was confirmed to him in 1564. On the forfeiture of his estates in 1581, this barony passed as part of a now reduced regality of Dalkeith to Esme, Earl of Lennox, and later in the same year was incorporated within the Dukedom of Lennox, which in 1583 passed to his son Ludovic Stewart (iii). In 1586 all lands formerly held by Morton were granted to Archibald, Earl of Angus, the previous grants being annulled, and in 1588 they descended to William Douglas of Lochleven, now 5th Earl of Morton (iv).

REDBRAYS. This barony was created for Patrick Hume of Polwarth in 1594; his son Patrick received sasine in 1599 (v).

WHITSOME. In 1511 this barony was part of the complex of Bothwell held by Adam Hepburn, 5th Earl of Bothwell; it appears to have descended in this family until forfeited in 1567 by James 4th Earl of Bothwell (vi). In 1581 it was granted to Francis Stewart, Earl of Bothwell, who in 1591

- (i) Ex.R., xx, p.461; R.M.S., vi, 365.
- (ii) R.M.S., iii, 2213, 2901; Reg.Hen.Morton, ii, pp.281-93.
- (iii) R.M.S., iv, 1535; ib., v, 204, 294, 596.
- (iv) ib., v, 908, 1674; Scots Peerage, vi, p.371.
- (v) R.M.S., vi, 80; Ex.R., xxiii, p.434.
- (vi) R.M.S., ii, 3635.

forfeited his lands; they were granted to Ludovic, Duke of Lennox, who resigned them in 1594 in favour of Walter Scott of Braxholm. In this latter transaction Whitsome appears to have lost baronial status, being referred to as "terrae" (i).

b) Baronies within Sheriffdom of Roxburgh

ANCRUM. This barony, along with Ashkirk and Lilliesleaf, belonged to the Bishopric of Glasgow, all being held in free regality. It would appear that the Kers of Gosford claimed the right of being hereditary bailie of Anorum, but this was lost for a time to Patrick, Earl of Bothwell, during the minority of Walter Ker, 1529; Ker was appointed bailie again in 1547 by governor Arran during an archiepiscopal vacancy (ii). In 1587 all the episcopal lands of Glasgow were granted to Walter Stewart of Cardonald, Commendator of Blantyre, who received the office of bailie of these baronies. In 1603 the regality of Glasgow, including these baronies, was granted to Ludovic, Duke of Lennox (iii).

ASHKIRK. See under Anorum.

AULD ROXBURGH. In 1452 this barony belonged to Andrew Ker of Altounburne, but before 1474 it had been incorporated within Gosford barony (q.v) for his son Walter Ker of Gosford (iv). It continued to be attached to that barony throughout the 16th century (v).

(i) ib., v, 218, 1888; ib., vi, 166.
 (ii) ib., ii, 1915; R.S.S., iii, 2261; A.D.C., pp.309, 311, 592.
 (iii) R.M.S., v, 1406; ib., vi, 1457.
 (iv) ib., ii, 526, 1167.
 (v) ib., ii, 1800; ib., iii, 2785; Ex.R., xv, p.666; ib., xix, p.524.

BEDRULE. In 1519 the lands of Bedrule belonged to George Turnbull of Bedrule, the superior being the Archbishop of Glasgow. Thomas Turnbull had sasine of the lands in 1570 (i). In 1571 they were confirmed as a barony to his son William and his wife Margaret, daughter of John Hume of Coldenknows. In 1589 Margaret Turnbull, their daughter and heiress, resigned the barony in favour of James Hume of Coldenknows (ii).

BONJEDBURGH. These lands belonged to the Earls of Angus. After the forfeiture of Archibald, Earl of Angus, they were granted in 1540 to William Douglas of Bonjedburgh as a barony. This appears to be the only mention of these lands as a barony, and there is no indication of their status on the restoration of Angus (iii).

BOWDEN. This barony was part of the regality of Kelso (q.v.) and owed service to the regality court. The Kers of Cesford were hereditary bailies of the barony (iv).

BRANKHOLM. This barony was created in 1464, from lands within the barony of Hawick and elsewhere, for David, son of Walter Scott of Kirkcud; in 1488 it was confirmed to his son Robert. In 1514 Walter Scott, great-grandson of David, received sasine; he conveyed the barony in 1528 to his son David, who died before 1544 (v). On the death of Walter Scott in 1552, the lands passed to his grandson Walter, aged 3, to whom they were confirmed as a barony in 1565 (vi). His son, Walter, held the barony

(i) R.M.S., iii, 187; Ex.R., xiv, p.624; ib., xx, p.409.

(ii) R.M.S., iv, 1967; ib., v, 1669.

(iii) ib., i, App.1, 154; ib., iii, 2189.

(iv) R.S.S., ii, 3698; H.M.S.S.C.R., xiv, 3, p.19; R.M.S., iv, 1988; R.P.S.S., v, p.71.

(v) R.M.S., ii, 772; ib., iii, 695; Scotts of Buccleuch, ii, pp.89-91; Ex.R., xiv, p.561.

(vi) Ex.R., xviii, p.567; R.S.S., v, 1990.

in 1575 (i).

BROUNDENE. This barony was granted to James Rutherford of Rutherford in 1493; it included the lands of Edyllishead which in 1426 had itself been a barony possessed by Gavin Maxwell (ii). In 1506, Broundene barony was incorporated within Edgariston barony (q.v.) and no further mention of it as a barony has been traced (iii).

BROXFIELD. In 1481 Andrew Lord Gray alienated land within this barony, but in 1490 he resigned the barony in favour of Alexander, 1st Lord Hume, who incorporated it within the barony of Hume (q.v.) (iv). Mark Ker of Dolphinton received half of the barony on its forfeiture by Hume in 1516; the other half was granted to Thomas Scott (of Petgormo), son of William Scott of Balwery, who was to agree with Ker on the exact division of the barony (v). In 1522 this barony was presumably restored to George Lord Hume with the other lands of the Hume complex, and it was confirmed to him in 1535. Alexander 5th Lord Hume, with his wife Margaret, resigned the barony, separate from the Hume complex, and were regranted it in 1558 (vi). In 1581 Alexander 6th Lord Hume took sasine, but before 1590 he alienated the barony to William MacDowell, who at that time gave it to his brother Thomas, of Maikerstain; it was restored to the Hume complex before 1606 (vii).

CAVERS. During the 15th century this barony belonged to the family of

- (i) R.M.S., iv, 2351.
- (ii) ib., ii, 64, 2121.
- (iii) ib., ii, 3014.
- (iv) ib., ii, 1523, 1958; H.M.S.S.C.R., xiv, 3, p.13.
- (v) R.M.S., iii, 116; R.S.S., i, 2839.
- (vi) R.M.S., iii, 1480; ib., iv, 1245; Scots Peerage, iv, p.458.
- (vii) Ex.R., xxi, p.460; R.M.S., v, 1995; ib., vi, 1842.

Bouglass of Cavers, hereditary sheriffs of Roxburghshire. James Douglas of Cavers held it from 1509 (i); another James Douglas, probably his son, received sasine in 1545, his son, William, in 1561, and again in 1576. His son, James, was given a charter in 1577 (ii).

CESFORD. This barony was held by the Kers of Cesford in the 15th century (iii). Andrew Ker had sasine in 1511, some ten years after he succeeded his grandfather; Andrew's son, Walter, received sasine in 1528 (iv). Walter continued to hold the barony; his first son, Andrew, was associated with him as heir in 1554, and, in 1564 (Andrew having died), his second son, William, received sasine as heir. In 1574, William's son Robert received a charter of the barony, although his grandfather still retained his life interest. William succeeded Walter ca. 1582, and himself died in 1600 (v).

CHALMIRLAN-NEWTON. In 1484 this barony was held by David Lindsay of the Byres, and in 1497 by his brother, Patrick Lindsay of Kirkforthar (later of the Byres), who, the following year, alienated it to Patrick, Earl of Bothwell (vi). Before 1509 it had reverted to the Crown, and in 1511 Patrick Lindsay once more apparently had possession; but in the same year it was also part of the Bothwell complex of Adam, Earl of Bothwell, and it seems to have remained within that complex, falling to the Crown on the various Bothwell forfeitures (vii). In 1581 it belonged to Francis Stewart,

(i) H.MSS.C.R., vii, pp.726-7; see also Appendix 1; R.S.S., 1, 1862; R.M.S., 11, 3613.

(ii) Ex.R., xviii, p.388; ib., xix, p.470; ib., xx, p.509; R.M.S., iv, 2651.

(iii) H.MSS.C.R., 111, p.17; R.M.S., 11, 1167, 1473, 2199.

(iv) Ex.R., xiii, p.662; ib., xv, p.666; Scots Peerage, vii, pp.328-9, 332.

(v) R.M.S., 111, 2765; ib., iv, 912, 2214; Ex.R., xix, p.524; Scots Peerage, vii, pp.339, 341.

(vi) Scots of Buccleuch, 11, p.84; R.M.S., 11, 2376, 2482.

(vii) R.M.S., 11, 3282, 3610, 3635; ib., iv, 244, 2419.

Earl of Bothwell, and on his forfeiture in 1591 it passed to Lennox, Duke of Lennox, who resigned it in 1594 in favour of Walter Scott of Branksholme. In 1606 the barony was possessed by Patrick Lindsay, burgess of Cupar, by virtue of his descent from Lindsay of the Byres (i).

CLIFTON. In 1505 half this barony belonged to James Tweedie, son of John Tweedie of Drumelzier; it belonged as lands only to Malcolm Lord Fleming in 1525 (ii). In 1561 sasine of half the lands and barony was given to William Tweedie, son of James, and in 1590 sasine was given to William's son James (iii).

EDGARISTON. In 1503 Helen Rutherford had sasine of the lands of Edgariston, Hownam and Broudown; in 1506, from the lands of Edgariston, the barony of Broudone (q.v.) and half the barony of Hownam (q.v.), this new barony of Edgariston was created for John Forman, Helen's first husband (iv). Thomas Rutherford, Helen's uncle, had sasine in 1514, but three years later he was at the horn for not delivering these lands into her possession(v). The barony presumably came into the possession of Helen's three later husbands (cf. Rutherford). Helen died without issue and the barony reverted into the line of her elder sister, Katherine Rutherford, who in 1502 had married James Stewart of Traquair; she may have been overlooked in the original descent of the lands as her marriage to Traquair was within the forbidden degrees and required a papal dispensation (vi). John Stewart of Traquair, grandson of James, had sasine of the barony in 1558, but in

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- (i) R.M.S., v, 218, 1888; ib., vi, 166, 1782.
 - (ii) ib., ii, 2862; ib., iii, 334.
 - (iii) Ex.R., xix, p.471; ib., xxii, p.438.
 - (iv) ib., xii, p.712; R.M.S., ii, 3014.
 - (v) Ex.R., xiv, p.573; A.D.C., pp. 95-6.
 - (vi) Scots Peerage, vii, p.367; ib., viii, pp.399-400.

1560, he granted the lands to his cousin Richard Rutherford; John's brother William had sasine in 1596 (i).

EDNEM. The lands of Ednem belonged to John Edmonston in 1457; in 1496 they were held as a barony by his son James. In 1544 the barony was confirmed to John Edmonston, and, in 1594, to John Edmonston and his son Andrew (ii).

FAIRNIHURST. These lands were part of the lordship of Jedburghforest (q.v.) belonging to the Earls of Angus. In 1540, during the forfeiture of Archibald, Earl of Angus, the lands were made a barony for Andrew Ker of Fairnihurst. This appears to be the only mention of these lands as a barony, and there is no indication of their status on the restoration of Angus (iii).

GRUBET. In 1523 the lands of Grubet belonged to George Rutherford, son of John, of Hundole; they were made a barony for George and his son Nicholas in 1542, which was confirmed to Nicholas and his son Andrew in 1559. In 1597 Nicholas Rutherford of Hundole had sasine of the barony (iv).

HASSENDEN. This barony seems to have been divided at an early date; William Cunningham was superior of half the barony in 1409 (v). It is not mentioned as divided in the 16th century, but, as it appears to have belonged to two different families at the same time, it is reasonable to assume that each held half. One portion was part of the Hume complex (q.v.); when that complex was forfeited in 1516 on the execution of Alexander, 3rd Lord Hume, lands within the barony fell into the king's hands. The barony was part of the complex again in 1535, and Alexander, Lord Hume, had sasine in

(i) Ex.R., xix, p.433; ib., xxiii, p.373; R.S.S., v, 515; R.M.S., iv, 1378.
(ii) R.M.S., ii, 607, 2323; ib., iii, 2987; ib., vi, 56.
(iii) ib., iii, 2142.
(iv) ib., iii, 240; R.S.S., ii, 4486; ib., v, 643; Ex.R., xxiii, p.400.
(v) R.M.S., i, 922.

1581 (i). The other portion belonged to the Cunninghams, Earls of Glencairn. Cuthbert, 2nd Earl, held it in 1511, and lands within this barony were described as being held from him in 1529 (ii). Andrew, 4th Earl of Glencairn, took sasine in 1552, William, 5th Earl, in 1575, and James, 6th Earl, in 1599 (iii).

HALDANE. Lands from this barony were alienated by William Haldane of Haldane in 1491, to make a new barony of Lowsilaw (q.v.). William Haldane had sasine in 1521, with confirmation in 1524; John Haldane and George Haldane had sasine in 1554 and 1594 respectively (iv).

HAWICK. In 1451 this barony appears to have belonged to William, Earl of Douglas, as part of the regality of Sprowston (q.v.), but was actually held, either from him or from the king, by William Douglas of Drumlanrig (v). William Douglas of Drumlanrig, his grandson, held the barony in 1511, and his son James had sasine in 1514; his son, William, still an infant, was associated with him in the barony in 1547, and received a charter in 1559 (vi). James Douglas, his son, was retoured heir in 1573; he resigned the barony in 1592, receiving it again as part of the regality of Drumlanrig (vii).

HOUSTON. John, Abbott of Jedburgh, alienated lands within this barony in 1541; this is the only mention of the barony traced for the 16th

- (i) ib., ii, 3406; ib., iii, 121, 1480; Ex. R., xxi, p.443.
 (ii) R.M.S., ii, 3545; Yester Writs, 454.
 (iii) Ex.R., xviii, p.534; ib., xx, p.478; ib., xxiii, p.427.
 (iv) ib., xv, p.592; ib., xviii, p.576; ib., xxi, p.496;
R.M.S., ii, 2012; ib., iii, 247.
 (v) R.M.S., ii, 475; Scotts of Buccleuch, ii, pp.41-2, 45-6.
 (vi) R.M.S., ii, 3576; ib., iv, 91; R.S.S., v, 682; Ex.R., xiv, p.456.
 (vii) Scotts of Buccleuch, ii, p.227; R.M.S., v, 2034.

century (i).

HOWNAM. In 1493 James Rutherford of that ilk held half the barony; it was incorporated within the barony of Edgariston (q.v.) in 1506, and remained linked with that barony, although sometimes described separately (ii). In 1574 lands within the barony of Crailing and Hownam were granted to Archibald, Earl of Angus; they had previously been held by Thomas Ker of Fairniehurst from Alexander Lord Hume. This may possibly have been the other half of the barony (iii).

JEDBURGHFOREST. George Douglas, Master of Angus, held the Lordship of Jedburghforest in 1489; in 1513 sasine of the barony was given to Archibald, 6th Earl of Angus, who in 1528 forfeited the lordship in favour of Walter Scott of Branxholm (iv). In 1534, Jedburghforest passed as a barony to James Stewart, eldest natural son of James V; it reverted to the Crown, possibly before 1539, certainly by 1540, and in 1542 Andrew Ker of Fairniehurst was bailie on behalf of the Crown (v). The barony, with regality, was restored to Angus in 1547. Archibald, 8th Earl, had sasine in 1559, and his tutor, James, Earl of Morton, had the gift of ward and non-entries in 1557 and 1561 (vi). It is not clear what happened to the regality during Angus' forfeiture of 1561. In 1589 William, 9th Earl, had sasine of the lordship; on the forfeiture of William, 10th Earl, it passed to Ludovic, Duke of Lennox, in 1594, being

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- (i) R.M.S., iii, 2780.
 - (ii) ib., ii, 2121, 3014; R.S.S., v, 515.
 - (iii) R.M.S., iv, 2347.
 - (iv) ib., ii, 1827; ib., iii, 640; Ex.R., xiv, p.532.
 - (v) R.M.S., iii, 2233; Ex.R., xvii, p.763; R.S.S., ii, 4967.
 - (vi) R.M.S., iv, 146; Ex.R., xix, p.447; R.S.S., v, 246, 929.

restored to Angus in 1602 (i).

KELSO. This regality belonged to the Tironensian Abbey of Kelso. The Kers of Cesford were hereditary justices and bailies of the regality (ii). James Stewart, natural son of James V, was Commendator from at least 1542 until 1558, and William Ker held the office in 1565; John Maitland of Thirlestane was Commendator in 1566, when he exchanged it with Francis Stewart, later Earl of Bothwell (aged 3 at this time), for the same office at Coldingham (iii). Except for a period in 1587-8, when it was held by Maitland (iv), Bothwell appears to have retained office until his forfeiture in 1591, when the lands of the Abbey gradually passed into the hands of the Kers of Cesford, later Dukes of Roxburgh.

LIDDESDALE. George, Master of Angus, held the lordship of Liddesdale in 1489; in 1491, Angus resigned Liddesdale in exchange for the lordship of Bothwell, and it was granted as a regality to Patrick, 1st Earl of Bothwell. On the forfeiture of Patrick, 3rd Earl, in 1540, it reverted to the Crown, but it was restored in 1542 (v). In 1556, James, 4th Earl, had sasine of the earldom, although this regality was not mentioned; the following year he was appointed bailie of Liddesdale for one year. The regality passed to his nephew, Francis Stewart, Earl of Bothwell, who held it in 1587; on his forfeiture in 1591, it was granted to Ludovic, Duke of Lennox, and, in 1594, to Walter Scott of Branksholm (vi).

LILLIESLEAF. See under Anerum.

(i) Ex.R., xxii, p.436; R.M.S., vi, 192, 1283.

(ii) H.M.S.S.C.R., xiv, 3, p.19; R.M.S., iv, 1988; R.P.C.S., v, p.71.

(iii) R.M.S., iv, 927, 2322, 2440; ib., v, 16, 1200-1; Lee, Maitland, p.28.

(iv) R.M.S., v, 1588.

(v) ib., ii, 1827, 2072-4; ib., iii, 2233; Douglas Book, iii, p.130; A.P.S., ii, p.424.*

(vi) Ex.R., xviii, p.609; R.S.S., v, 291; R.M.S., v, 1316, 1888; ib. vi, 166.

LINTON. This barony belonged to the Lords Somerville of Carnwath, although it has been suggested that the lands were sold by John, 3rd Lord, to the Kers (? of Dolphinton) (i). Hugh, 4th Lord, had sasine of the barony in 1525 and held baron courts of Linton in 1536 (ii). James, 5th Lord, had sasine in 1550, and Hugh, 6th Lord, in 1575; Gilbert, 7th Lord, before he actually succeeded to the title, sold the barony to Walter Ker of Littledean in 1592 (iii).

LONGNEWTON. In 1541 this barony belonged to Robert Douglas of Locheleven; he died in 1547 and was succeeded by his son William who, in 1588, became Earl of Morton. William's son Robert was associated with him in the barony in 1565, and in 1590 it belonged to the Earl of Morton (iv).

LOWSILAW. In 1491 this barony was created for Robert, son of Walter Ker of Cesford, from lands within the barony of Haldane (q.v.). There has been no further mention of this place traced, either as lands or barony (v).

MAKERSTON. This barony belonged to Andrew Macdowell in 1478; in 1536, Thomas Macdowell had sasine. Thomas Macdowell held it in 1551, and, in 1610, it belonged to William Macdowell (vi).

MAXTON. In 1451 the lands of Maxton belonged to Robert Colville of Ochiltree; Robert Colville sold them in 1509 to Mark Ker of Dolphinton and they descended in 1550 to Andrew Ker. In 1588 these lands, with the lands of Littledean, were made into the barony of Maxton for Walter Ker

(i) Scots Peerage, viii, p.15.

(ii) Ex.R., xv, p.636; Carnwath, pp.168, 185.

(iii) Ex.R., xviii, p.498; ib., xx, p.490; R.M.S., vi, 139.

(iv) R.M.S., iii, 2260; ib., iv, 1650; R.S.S., ii, 3949; R.P.C.S., iv, p.504.

(v) R.M.S., ii, 2012.

(vi) R.M.S., ii, 1359; ib., iv, 609; ib., vii, 237.

of Littledean, although there were earlier references to the barony in 1580 and 1586 (ii).

MAXWELL. This barony belonged to John, 4th Lord Maxwell, in 1509, and in 1513 sasine was given to Robert, 5th Lord. In 1534 it was confirmed to him, along with other lands, and the caput moved to Caerlaverok (ii). Robert, 6th Lord Maxwell, had sasine in 1551, John, 8th Lord, in 1558 and John, 9th Lord, in 1597 (iii).

MELROSE. This regality belonged to the Cistercian Abbey of Melrose. The Scotts of Buccleuch were bailies of the regality; David Scott was appointed in 1484 for a period of five years, and Walter Scott in 1519 for a period of nineteen years, and, in 1524, the office was made hereditary in the family (iv). The lay Commendators were: James Stewart, illegitimate son of James V, who held the office, along with that of Kelso, until his death in 1558; Michael Balfour, who was commendator in 1562 and until his death sometime before November 1574; and James Douglas, who was in office in 1584 (and probably had been since the decease of Balfour) and remained in office until well into the first decade of the 17th Century (v).

MINTO. In 1503 this barony belonged to John Stewart of Minto; Robert Stewart had sasine in 1520. The Stewarts resided on their lands in Lanarkshire, and the bailie of the barony in 1521 was William Turnbull, who possessed half the demesne lands of Minto after 1522 (vi). Robert Stewart died before 1541; John Stewart had sasine in 1553. In 1569 John Turnbull had sasine of the half the demesne lands within his bailiership; and in

(i) ib., ii, 417, 3362; ib., iv, 489; ib., v, 39, 1186, 1456.

(ii) R.S.S., i, 1832; Ex.R., xiv, p.530; R.M.S., iii, 1402.

(iii) Ex.R., xviii, p.523; ib., xix, p.424; ib., xxiii, p.391.

(iv) Scotts of Buccleuch, ii, pp. 82, 133-6, 142-3.

(v) R.M.S., iv, 1864, 2219; 2319; ib., v, 1157; ib., vi, 2120.

(vi) ib., ii, 2700; ib., iii, 1707; Ex.R., xv, p.585; Selkirk Burgh Court Book, MS.S.R.O., f.88v.

1576 William Turnbull of Minto had the power of alienating lands within the barony (i).

ORMISTON. This barony was created in 1452 for George Ormiston of that ilk, and descended in that family. James, son of George Ormiston, received a charter of the barony in 1515, and in 1550 James Ormiston had sasine (ii). He, in 1567, forfeited his lands for the part he played in the murder of Darnley; they appear to have been given to Captain Robert Anstruther, who, in 1581, resigned this barony in favour of William Ker of Cesford. This grant was ratified in 1585, 1587 and 1592 (iii).

OXNAM. In 1451 this barony belonged to Robert Colville of Ochiltree; Robert Colville held half the barony in 1509, having sold the other half to Andrew Ker of Fairniburst. Ker acquired the other half in 1511, and he held the entire barony in 1524. The lands of Oxnam were included within the barony of Fairniburst (q.v.) in 1540 (iv).

PRENDERLEITH. This barony belonged to the Lords Saltoun of Abernethy, and was incorporated in 1483 within the barony of Abernethy; sasine was given William Abernethy, 5th Lord Saltoun, in 1528 and 1531 (v), to Alexander, 6th Lord, in 1556 and 1560, to George, 7th Lord, in 1587, and to John, 8th Lord, in 1598 (vi).

PRIMSIDE. This barony was created for Walter Ker of Cesford in 1542 from lands already in his possession; in 1564 the lands of Primside were part of Cesford barony and no other reference has been traced to

(i) R.S.S., ii, 4168; Ex.R., xviii, p.563; ib., xx, p.393; R.M.S., iv, 2559.

(ii) R.M.S., ii, 576, 792; R.S.S., i, 2640; Ex.R., xviii, pp.499-500.

(iii) A.P.S., iii, pp.269, 416, 612; R.M.S., v, 1364, 2029.

(iv) R.M.S., ii, 417, 3338, 3340, 3674; ib., iii, 249, 2142.

(v) ib., ii, 1534; Ex.R., xv, p.666; ib., xvi, p.538.

(vi) R.S.S., v, 762; Ex.R., xviii, pp. 610-11; ib., xxi, pp.539-40; ib., xxiii, pp.407-8.

this barony as a separate entity (1).

RIDDELL. This barony was created in 1602 for John Riddell of that ilk (ii).

ROXBURGH. This barony was created in 1588 for William Ker of Gosford, for his services as warden (iii).

RUTHERFORD. The lands of Rutherford within the barony of Cavers belonged to Rutherford of that ilk; they descended to Helen Rutherford, and the barony of Rutherford was created in 1511 for John Forman, her first husband; in 1514 her uncle Thomas Rutherford had sasine, although the barony rightly belonged to her (cf. Edgariston). In 1535 Helen's fourth husband, Patrick Hume, held half the demesne lands of Rutherford (iv). Like Edgariston, this barony descended to the Stewarts of Traquair; John Stewart had sasine in 1558, and William, his brother, in 1596 (v).

SCRAISBURGH. This barony belonged in 1510 to Minian, son of John Glendinning of Parton; in 1536 he sold the lands and barony to John Rutherford of Hunthill, who, with his father, Andrew, had held lands within the barony (vi). In 1578, John Rutherford of Hunthill had sasine, and in 1615 John Rutherford was given an increased barony of Scraisbury which had the alternative name of Hunthill (vii).

SMAILHOLM. In 1451 this barony was part of Sprouston regality (q.v.). The lands of Smailholm within the barony (possibly the demesne lands) belonged to John Cranston of that ilk in 1526; his son, William, had sasine, apparently of the barony, in 1553. His son, John Cranston, similarly had

(1) R.M.S., iii, 2784; Ex.R., xvii, p.747; ib., xix, p.624.

(ii) R.M.S., vi, 1361.

(iii) ib., v, 1521.

(iv) R.M.S., ii, 3612; ib., iii, 1491; Ex.R., xiv, p.573.

(v) Ex.R., xix, p.433; ib., xxiii, p.373.

(vi) ib., xv, pp.608, 668; ib., xvi, p.520; R.M.S., ii, 3503; ib., iii, 1655.

(vii) Ex.R., xx, p.529; R.M.S., vii, 1296.

sasine in 1569 (1).

SPROUSTON. A regality of this name belonged to William, Earl of Douglas, in 1451, but it appears to have left no later traces; lands of Sprouston were part of Smailholm barony (q.v.). In 1592 other lands of Sprouston, belonging to Kelso Abbey, were granted to Robert Ker of Cesford on the forfeiture of Francis Stewart, Earl of Bothwell, and from these and other Kelso lands, a new barony of Sprouston was created for him in 1602 (11).

STITCHILL. The demesne lands of Stitchill, within the barony, were granted to Alexander, son of John Gordon, of Lockinver, in 1512. In May, 1517, sasine of the same lands was given to his grand-daughter, Janet, who, five days later, alienated them to her uncle, Robert Gordon (son of Alexander by his second marriage) (111). Robert's son, James, had sasine of the (demesne) lands in 1526, and his son, John, in 1550. In 1564, John's brother William was associated with him as heir to the barony; in 1566 they gave the barony in life rent to Barbara Logie, wife of Alexander Gordon, Bishop of Galloway, but the following day it reverted to them (iv).

ULSTON. This barony belonged to the Augustinian Abbey of Jedburgh. In 1562 Andrew, Commendator of Jedburgh, granted lands from within the barony to Marjory, widow of George, Lord Hume, and he also granted lands from it in 1580; these lands were tenures within the burgh of Jedburgh, and the lands known as the lands of Ulston do not appear to have been part of the barony at this time. The Crown alienated lands from within the barony in 1588 (v). No later mention of the barony has been traced.

(1) R.M.S., 11, 475; 1b., 111, 359; Ex.R., xviii, p.553; 1b. xx, p.396.

(11) R.M.S., 11, 475; 1b., v, 2018; 1b., vi, 1342.

(111) 1b., 11, 3772; 1b., 111, 163; Ex.R., xiv, p.592.

(iv) Ex.R., xv, p.638; 1b., xviii, p.497; R.M.S., iv, 1492; R.S.S., iv, 803; 1b., v, 2966, 2974.

(v) R.M.S., iv, 1737; 1b., v, 959, 1521.

WILTON. John, son of James Langlands, was given this barony in 1451; in 1495 John Scott of Wilton sold the barony, along with the patronage of the Church, to Patrick, 1st Earl of Bothwell. This transaction, however, must have involved only half the barony, as, in 1536, James Langlands had sasine of the barony with the patronage 'alternatis vicibus' (i). Robert Langlands had sasine of half the barony in 1597, and George Langlands in 1614 (ii). That portion (although designated the whole barony) which passed into the Bothwell complex, remained within that complex (1511, 1581, 1587) and on the forfeiture of Francis Stewart, Earl of Bothwell, it passed, first in 1591, to Ludovic Duke of Lennox, and, secondly, in 1594, to Walter Scott of Braxholm (iii). It is not clear to which portion reference was made in 1539 when a gift of the non-entries of half the barony was given to Archibald Betoun of Capildra (iv).

YETHOLM. In 1478 this barony belonged to Andrew, son of Dungall Macdowell of Makerston, who sold it in 1495 to Patrick, 1st Earl of Bothwell. In 1563 James, 4th Earl, sold the demesne lands to Gilbert Ker of Prymesydelloch but the barony reverted to the Crown on the forfeiture of Bothwell (v). In 1581 it was held by Francis Stewart, Earl of Bothwell, and on his forfeiture it passed in 1591 to Ludovic, Duke of Lennox, and, in 1594, to Walter Scott of Braxholm (vi).

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- (i) R.M.S., ii, 441, 2255; Ex.R., xvi, p.609.
 - (ii) Ex.R., xxiii, p.397; R.M.S., vii, 1090.
 - (iii) R.M.S., ii, 3635; ib., v, 218, 1316, 1888; ib., vi, 166.
 - (iv) R.S.S., ii, 3130.
 - (v) R.M.S., ii, 1350, 2254; ib., iv, 2551; ib., v, 743.
 - (vi) ib., v, 218, 1888; ib., vi, 166.

APPENDIX 3

Wardens of the Scottish Marches and Keepers of Liddesdale, 1513 - 16031. East March

Alexander, 3rd Lord Hume, who had held the office prior to Flodden, undertook the rule of the ~~Mase~~ along with the two other wardenries on 22nd October, 1513; he remained in office until August, 1515, when he was accused of treason by the Regent Albany (i).

Andrew Ker of Gosford was apparently appointed to this march by Albany before 26 August, 1515, but refused to accept this responsibility additional to that of the middle march (ii).

Alexander, 3rd Lord Hume was temporarily restored to favour and acted as warden in July, 1516; he was executed on 8th October, 1516 (iii).

Antony Deroes de Labastie was acting as warden and lieutenant in November, 1516. He was murdered in the course of his duties on 17th September, 1517, by David Hume of Wedderburn (iv).

James, 1st Earl of Arran, was appointed warden and lieutenant on 24 September 1517, and was active on this march until January, 1521. There was apparently no warden acting on the East march in December, 1521 (v).

George, 4th Lord Hume, may have been acting as warden in a military capacity in May, 1523, and again in October, 1523 (vi).

(i) Ex.R., xiii, pp.352, 412; A.D.C., pp.4, 53.

(ii) Hy.VIII, ii, 1, 856, 870. In this calendar he is described as David Ker, a misreading of the form 'Dand' for 'Andrew'.

(iii) A.D.C., p.69.

(iv) T.A., v, pp.95-6; A.D.C., p.97.

(v) A.D.C., p.103; Edinburgh Burgh Charters, p.204; Hy.VIII, iii, 1, 1871.

(vi) A.D.C., p.169. On 12 October letters were sent to Hume and Gosford concerning warden proclamations, implying both were wardens (T.A.v, p.227). The following day letters were sent to Hume and to "the Wardane"; this could imply that Hume was not warden, but this is unlikely and "the wardane" was probably Gosford on the middle march.

John, 3rd Earl of Lennox, was acting as warden and lieutenant from December, 1523 until April, 1524, when he received payment of salary for these months; his appointment was renewed on 6 September, 1524, for one year (1).

Archibald, 6th Earl of Angus, was appointed warden and lieutenant of this march and of the middle march and other inland neighbouring areas on 15 March, 1525; the appointment was renewed on 16th July, 1527 for one year. He was accused of treason on 13 July, 1528. From August to

November, 1526, George, Lord Hume, acted as his deputy on this march (ii).

George, 4th Lord Hume, accepted office on 6 July, 1528. During the royal raid of 1530 he was, with the other wardens, kept in ward, from which he was freed on 15 December, 1530. Thereafter, he continued in office at least until January, 1532 (iii). In October, 1528, his brother John, Abbot of Jedburgh, and in December, 1531, Alexander Hume, Tutor of Wedderburn (later Alexander Hume of Manderston) were apparently associated with him in the wardenship, possibly as deputies (iv).

James Stewart, Earl of Moray, was appointed warden-general of all the marches on 12 October, 1532, Hume being subordinated to him as his deputy on this march (v).

George, 4th Lord Hume, was in office on 28 January, 1535, and in 1536; in September, 1538 he was summoned to "underly the law for certane crymes" (unspecified), and probably dismissed (vi). The wardenship was exercised from 1539 to 1542 by two deputy wardens acting in concert,

(1) T.A., v, p.237; A.D.C., pp.207-8.

(ii) A.D.C., pp.215-6, 229, 269, 279; A.P.S., ii, p.297; Hy.VIII, iv, 2, 2413, 2449, 2625.

(iii) A.D.C., pp.276, 328, 345, 369.

(iv) ib., pp.286, 346-7, 367.

(v) ib., pp.387-8.

(vi) ib., pp.433, 450; T.A., vii, p.92.

George Hume of Ayton and John Swinton of that ilk, who received payment from the Crown (i). Aytoun remained in office as deputy as late as 15 November, 1542, but he was perhaps acting at this stage as a subordinate of Hume, who appears to have been reinstated about November or December, 1542, and who was in office throughout 1543 (ii). In 1545 the English still appear to have regarded John Swinton as a warden or deputy. Hume was reappointed on 17 August, 1546, for one year (iii).

Alexander, 5th Lord Hume, was appointed on 19 April, 1550, this being confirmed in July, for one year (iv). His appointment was renewed on 31 October, 1557, and he was in office in January, 1558. His brother, Andrew Hume, Abbot of Jedburgh, was acting as deputy in 1554 (v).

Walter Ker of Cessford appears to have displaced Hume early in 1558; he received payment in October for "this instant yeir 1558" as warden of the east as well as of the middle march (vi).

Alexander, 5th Lord Hume, was again warden in May, 1559; he was confirmed in office under Queen Mary in 1561 and was probably acting prior to this date (vii). In 1561 it is probable that John Hume of Coldenknowes was acting as his deputy, while Alexander Hume of Huttonhall was his deputy in 1565. Lord Hume remained in office at least until February, 1570, and possibly continued to act as this official within the party of the Queen (viii).

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- (i) T.A., vii, pp.336, 479; ib., viii, p.103.
 - (ii) Hamilton, i, pp.lxix, 337, 556, 582.
 - (iii) ib., ii, p.560; H.MSS.C.R., xii, 8, p.183.
 - (iv) R.P.B.S., i, p.94; H.MSS.C.R., xii, 8, p.183; Ex.R., xviii, p.498.
 - (v) H.MSS.C.R., xii, 8, pp.99, 183; R.P.C.S., xiv, p.122.
 - (vi) T.A., x, p.393.
 - (vii) C.S.P.(For.), 1558-9, 717; R.P.C.S., i, p.157.
 - (viii) R.P.C.S., xiv, p.236; ib., i, pp.182-3; C.S.P. (For.), 1569-71, 666; Diurnal, p.166.

In September, 1570, William Trotter is described as a warden deputy of the East March, and appears to be acting in conjunction with Alexander Hume of Huttonhall, Alexander Hume of Manderston, and Andrew Hume of Ninewells (1). William, Lord Ruthven was apparently appointed warden later in the same month, but there appears to have been no effective warden during most of the civil war period (ii).

James Hume of Coldenknows was appointed warden on 6 November, 1573; he was dismissed sometime between 19 August and 15 September, 1578 (iii).

George Hume of Wedderburn was paid, sometime in 1579, one year's warden fee, having "servit ... now ane compleit yeir bygane". He was removed from office and warded, early in 1581 because of his relationship with Regent Morton (iv).

Alexander, 6th Lord Hume, was acting as warden on 4 April, 1581; he continued in office until April, 1599 (v). Alexander Hume of Huttonhall acted as a deputy on various occasions between 1582 and 1594 (vi).

Alexander Hume of Manderston had previously acted as Lord Hume's deputy, and was appointed warden on 28 April, 1599, during his absence from the realm; he resumed his position as deputy on Lord Hume's return (vii).

Alexander, 6th Lord Hume, returned to office before 28 July, 1600; he remained in office until 1603, although absent from Scotland on ambassadorial duties from 16 July to October, 1602. On 7 July, 1603, he was

- (1) T.A., MSS. vol. 1569-71.
- (ii) C.Scot.P., iii, p.357.
- (iii) R.P.C.S., ii, p.300; C.Scot.P., v, pp.314, 322.
- (iv) H.MSS.C.R., Milne Hume, pp.49, 52.
- (v) C.Scot.P., vi, p.3; R.P.C.S., v, p.748.
- (vi) R.P.C.S., iv, p.41; C.B.P., i, 121, 572, 596, 986.
- (vii) C.B.P., ii, 946; R.P.C.S., v, p.552; ib., vi, pp. 136-7.

appointed Lieutenant and Justiciar over all three Scots marches (i).

2. Middle March

Alexander, 3rd Lord Hume, undertook responsibility for this wardenry on 22 October, 1513, claiming payment of his fee in July, 1514. He remained in office until accused of treason by the Regent Albany in August, 1515 (ii).

Andrew Ker of Cesford accepted office on 10 August, 1515, Thomas, Abbot of Kelso, and George Ker, who may have been his brother, being associated with him; he retained office even when Hume was temporarily restored to favour. Mark Ker of Dolphinton was his lieutenant or deputy in October, 1515. (iii). In March, 1519, the duties of warden appear to have been shared between Cesford, Andrew Ker of Fernihurst and Mark Ker (of Littledean, i.e. Dolphinton); the latter were possibly Cesford's deputies. Cesford was "removit fra the kingis service" on 10 March, 1525 (iv).

Archibald, 6th Earl of Angus, was appointed warden and Lieutenant of this and the east march on 15 March, 1525, which appointment was renewed on 16 July, 1527, for one year. Mark Ker, and probably also Andrew Ker of Fernihurst, were deputies in May, 1526, and Fernihurst, described in September, 1527, as applying himself to the administration of justice, may have contrived to act as his deputy for some time (v).

(i) Warrender Papers, ii, p.390; R.P.C.S., vi, p.833.

(ii) A.D.C., pp. 4, 53; Ex.R., xiv, p.17.

(iii) A.D.C., p.53; Hy.VIII, ii, 1, 795, 1672.

(iv) A.D.C., pp. 141-2, 214.

(v) ib., pp. 215, 259; Hy.VIII, iv, 2, 3421; ib., viii, 1, 2176.

On 14 July, 1528, the march was divided into two spheres of influence. In the western portion Walter Seot of Branhholme acted as warden; in the eastern portion Walter Ker of Cesford, aged about 11 at this time, his tutor George Ker, Andrew Ker of Fernihurst and Mark Ker of Littledean acted as joint wardens (i). This arrangement may have continued at least until 2 July, 1532, when Buccleuch was still associated with the wardenship (ii); but the effective wardens were Andrew Ker of Fernihurst, Mark Ker of Dolphinton (formerly of Littledean) and George Ker, tutor of Cesford, who were re-appointed on 21 June, 1529, and received their fees on various dates thereafter (iii). Before 10 October, 1531, Walter Ker of Cesford replaced his tutor in this group; but Dolphinton and Fernihurst were the active wardens, especially Dolphinton who often appears to have acted alone (iv). In June, 1532, Andrew Ker of Graden, eldest son of Mark Ker, was acting as his deputy (v).

James Stewart, Earl of Moray, was appointed warden-general on 12 October, 1532, the triumvirate acting as his deputies on this march, probably at least until August, 1533 (vi).

Walter Ker of Cesford was acting as sole warden on 8 January, 1536, and had been for some time (vii). On 8 November, 1538, Cesford, with others, was summoned before an assize to answer "for certane crymes thai war accusit for", and appears to have been dismissed about this time. The crime was

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- (1) A.D.C., p.279.
 - (ii) Scotts of Buccleuch, ii, p.333.
 - (iii) A.D.C., pp.311, 317; T.A., vi, pp.47, 101.
 - (iv) A.D.C., pp.352, 363, 383.
 - (v) Hy.VIII, v, 1246.
 - (vi) A.D.C., pp. 387-8; T.A., vi, p.138.
 - (vii) A.D.C., p.431.

violation of their (General) Band to the King (i). Andrew Ker of Fernihurst was proclaimed warden about 26 November, 1538 (ii). He remained in office at least until July, 1542 when he was paid jointly with Robert, 3rd Lord Maxwell, who appears to have been associated with him in office. In 1541, John Ker, his eldest son, and William Ker, acted as his deputies (iii).

Walter Ker of Cesford was again in office on 18 September, 1542; he was discharged by Arran on 22 October, 1544 for treasonable communication with England (iv).

During most of the war with England, the office appears to have been in abeyance, except for a brief period in September, 1546 when Cesford was acting as warden (v).

Walter Ker of Cesford was re-appointed on 19 April, 1550, a few days after news of peace had arrived from France; his commission was dated 25 July (vi). Almost immediately, his area of jurisdiction was reduced, as Walter Scott of Branxholme was made lieutenant of half the march, "in quhilk boundis his freindis ... duellis", on 29 April, 1550 (vii).

(i) T.A., vii, pp.97, 106; Pitcairn, i, p.208.

(ii) T.A., vii, p.106. The document calendered under 1 April, 1537 (Hy.VIII, xii, 1, 804), in which Norfolk, writing from Berwick, appears to have met Fernihurst as warden, should have been calendered under 1 April, 1539 (of.Hy.VIII, xiv, 1.625, where Norfolk states he has not been in Berwick for 14 years).

(iii) T.A., viii, p.103; Hamilton, i, pp.118-9.

(iv) Hamilton, i, pp.212-3; Scotts of Buccleuch, ii, p.182.

(v) T.A., viii, p.483.

(vi) R.P.C.S., i, p.94; Ex.R., xviii, p.498.

(vii) Scotts of Buccleuch, ii, p.196.

Walter Scott of Brankholme was granted a commission as warden of the entire march on 29 June, 1551; he remained in office until assassinated in October, 1552 by Walter Ker of Cesford (i).

Alexander, 5th Lord Hume, was acting as warden of this march on 27 December, 1552, possibly with John Hume of Coldenknows as his deputy (ii).

David Hamilton of Preston and Fingalton was warden on 17 January, 1553, with Nicholas Rutherford of Hundolee and William Douglas of Bonjedburgh acting as his deputies from February; he remained in office at least until 29 September, 1553 (iii).

John, 4th Lord Hay of Yester, was appointed warden in April 1554, shortly after Mary of Guise became Regent (iv).

Andrew Johnstone of Elphinstone received payment as warden from 22 August, 1554 until 22 October, 1555 (v).

James, 4th Lord Fleming, was appointed warden on 10 October, 1556 (vi).

Alexander, 5th Lord Hume, was given a commission of wardenry dated 8 January, 1557; he was reappointed on 21 October, 1557, and remained in office until February, 1558 (vii).

Walter Ker of Cesford was appointed warden some time between 25 February (when he was not warden) and 30 March, 1558 (viii). In 1563 it was stated

(i) ib., ii, p.204; R.M.S., iv, 819.

(ii) T.A., x, p.150.

(iii) R.P.C.S., i, pp.137-8; T.A., x, pp.154, 168, 188-9, 211; H.M.S.S.C.R., xi, 6, p.39.

(iv) R.P.C.S., xiv, p.127.

(v) T.A., x, pp.233, 296.

(vi) Wigton Charter Chest, 98.

(vii) Ex.R, xviii, p.611; ib., xix, p.415; H.M.S.S.C.R., xii, 8, p.99; T.A., x, p.331.

(viii) T.A., x, pp.339, 344; R.S.S., v, 1202.

that Maxwell of Terreglis had been warden of the middle marches "in the last weiris"; but there is no other evidence that he held office in this march about this time. See also under West March, where it is shown that Maxwell was in prison at the crucial time. Ker's appointment was renewed on 26 October, 1561 by Mary, the new sovereign, prior to which date his eldest son, Andrew Ker of Caverton, appears to have been acting, possibly as his deputy; he remained in office until May 1570 (i). William Ker of Cesford, son of Walter Ker, was warden in October, 1570, and was paid regularly thereafter by order of the various regents in control (ii). During the civil war, however, Thomas Ker of Fernihurst claimed to be warden on behalf of the Queen's party, and the English wardens appear to have acted with either official as seemed most favourable in the local circumstances (iii). This confusion ended when Fernihurst joined the defenders of Edinburgh castle and later, in 1573, went into exile, leaving Cesford undisputed warden. During the Lieutenancy of Angus, from December 1576, the wardenry was divided into two parts: Cesford was warden "by East the streat" (i.e. the Roman road, Dere Street), while the office "bwest the strete" was entirely separate and held by William Douglas of Bonjedburgh. This division may have been ended about March, 1578, when Morton surrendered his 'patronage' of the western division of the office (iv). Cesford continued to act as warden of the entire march, and

(i) R.P.C.S., i, pp.157, 169, 282, 385, 491; ib., ii, p.73; C.Scot.P., iii, p.146.

(ii) T.A., MSS. vols. 1569-71, 1571-4.

(iii) C.Scot.P., iii, p.672; Newbattle MSS., vol.ix, 52-5; Diurnal, p.165.

(iv) C.Scot.P., v, pp.255, 277; Douglas Book, iv, pp.215-16.

his appointment was renewed on 13 January, 1581. He remained in office at least until 5 September, 1584 (i).

Thomas Ker of Fernihurst was appointed on 13 November, 1584, his commission being dated 21 November (ii). He was concerned in the death of Lord Francis Russell at a day of truce on 27 July 1585, and as a result of this was removed from office and warded in the castle of Doune before 19 August, 1585 (iii).

William Ker of Cesford was restored to office some time before 25 October, 1586, and remained active as warden certainly until May, 1593 and probably until 1594. His eldest son, Robert Ker, acted as his deputy in 1590 and in 1594 (iv).

Robert Ker of Cesford appears to have taken over the office of warden sometime between March 1594, when he was deputy, and 4 October, 1594, when he acted as full warden; he remained in office until 1602 (v), John Mowe of that Ilk, Andrew Ker of Heiton and Andrew Ker of Greenhead acting as his deputies on various dates between 1597 and 1602 (vi). In October,

(i) R.P.C.S., iii, pp.325, 344-8; Newbattle MSS., vol.x, 51.

(ii) R.P.C.S., iii, p.699; Newbattle MSS., vol.x, 56. A letter was addressed to Fernihurst as warden dated 3 April, 1584 (ib., vol.xi, 70) but this is clearly a clerical 'new-year' error for 1585.

(iii) R.P.C.S., iv, p.4; C.Scot.P., viii, p.70.

(iv) C.B.P., i, 379; R.P.C.S., iv, pp.206, 272, 526, 530, 585, 648; ib., v, pp.71, 81, 137. There is no record of his acting as warden after 24 May, 1593, although he was an active Privy Councillor from 1595 to 1597; although there is no formal record of his leaving office, nor of his successor's appointment, one need not assume with Tough that he remained in office until his death.

(v) R.P.C.S., v, pp.178, 230, 742; ib., vi, pp.136, 407.

(vi) C.B.P., ii, 543, 1382, 1383; R.P.C.S., vi, p.440.

1600 the march appears to be divided in two portions, the warden answering for the eastern sector, and Andrew Ker of Fernihurst taking responsibility for West Teviotdale; this division might have been brought about by feud (i). Andrew Ker of Greenhead was appointed on 3 August, 1602 to act as warden during Cesford's absence from the realm (ii).

3. West March

Alexander, 3rd Lord Hume, undertook responsibility for this march on 22 October, 1513, claiming payment of his fee in July, 1514. He remained in office until accused of treason by the Regent Albany in August, 1515 (iii). Robert, 5th Lord Maxwell, was appointed on 10 August, 1515, and his appointment was renewed on 22 May, 1517 (iv). On 15 March, 1523, James Johnstone of that Ilk was associated with him as warden, but he probably acted as a deputy (v). Maxwell's commission was renewed on 16 March, 1525, and at intervals thereafter (vi). He was warded during the royal raid of 1530, being released to take up his duties again on 10 August (vii). On 5 December, 1531, John Johnstone of that Ilk was associated with him as warden, but Maxwell was acting alone on 17 December (viii). He was apparently in office until 1541, although absent from the country on at least one occasion, in May 1538, when he was the ambassador to France responsible for the arranging of the second royal wedding (ix). He was captured at

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- (i) O.B.P., ii, 1266.
 - (ii) R.F.C.S., vi, p.440.
 - (iii) A.D.C., pp.4, 53; Ex.R., xiv, p.17.
 - (iv) Hy.VIII, ii, 1, 795; A.D.C., p.90.
 - (v) Annandale Book, i, p.xxx.
 - (vi) See Footnote, Chap.2, p.73 for details of these renewals.
 - (vii) A.D.C., pp.328, 335.
 - (viii) ib., pp.367, 369.
 - (ix) ib., pp.396, 412, 455; R.M.S., iii, 1692, 2366; T.A., vi, p.lxxv.

Solway Moss in November 1542, but shortly returned to Scotland; he resigned office in favour of his son on 30 August, 1543 (i).

Robert, Master of Maxwell, acted as warden immediately after his father's capture, John Johnstene of that Ilk being associated with him in preparations for war; Dacre reported him to be in office in December, 1542 (ii). A letter under the Privy Seal dated 12 February 1543 appointed him sole justice-warden; he retained the office, his father officially resigning some time after his return to Scotland, and a further commission of wardenship was issued to him on 19 December 1544 (iii). He was in office in June, 1545, but was captured by the English about 19 September (iv).

Robert, 5th Lord Maxwell, returned to Scotland in October, 1545 after a second imprisonment in England; he was reappointed warden on 3 June, 1546, but died the following month (v).

John Maxwell of Terreglis, Master of Maxwell, later 4th Lord Herries, the second son of Robert, 5th Lord Maxwell, received payment of £300 in December 1550, a warden fee for 3 years. He appears to have been warden from about October 1546 onwards, and was apparently in charge of military forces on the march (vi). This suggested period of office appears to be confirmed by the numbers of the letters written to him at this time by the central Government (vii).

Robert, 6th Lord Maxwell, was released from England in 1549 and was appointed

(i) A.D.C., p.534.

(ii) Annandale Book, ii, p.3; Hamilton, i, p.324.

(iii) R.S.S., iii, 86; Caerlaverock Book, i, p.212. But of. p.193 where the same commission is stated to have been issued to Robert, 5th Lord Maxwell. It has not been found possible to examine the original commission, and the confusion at this point remains unresolved.

(iv) R.P.C.S., i, p.9; Hy.VIII, v, 525-6.

(v) Caerlaverock Book, i, p.203; R.F.C.S., i, p.28.

(vi) T.A., ix, p.461; C.Scot.P., i, p.101.

(vii) See chap.4, section 2, p.205.

warden on 29 March, 1550. He remained in office until appointed a Commissioner for the Debateable Lands on 20 March 1552; he died shortly afterwards (i).

John Maxwell of Terreglis was appointed in place of his brother on 20 March, 1552. On 7 October the regent Arran wrote that there was no warden on this march, but it is difficult to reconcile this with the fact that a new commission had been issued to Terreglis on 2 October (ii). Terreglis seems to have had difficulty in exercising his authority because of feuds, and on 28 August, 1553, refused to accept a renewal of his appointment (iii).

James Douglas of Drumlanrig was appointed on a temporary basis on 30 August, 1553, but demitted office before 8 June, 1554 (iv).

John Maxwell of Terreglis was restored to office before 13 July, 1554, and received payment on various dates until July 1555 (v).

James Douglas of Drumlanrig was reappointed on 23 October 1555, and was in office the following month (vi).

Patrick, 3rd Earl of Bothwell was given a commission of wardenry on 31 August, 1556 and had been acting as lieutenant a short time before this. He died the following month (vii).

James, 4th Lord Fleming, was appointed on 10 October, 1556 (viii).

John Maxwell of Terreglis, was given a commission of wardenry on 24 May,

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- (i) Ex.R., xviii, p.491; R.P.C.S., i, pp. 117, 121.
 - (ii) Lorraine Corr., p.360; Ex.R., xviii, p.491.
 - (iii) R.P.C.S., i, p.143.
 - (iv) ib., i, pp.145-7; Ex.R., xviii, p.559.
 - (v) R.P.C.S., xiv, p.135; T.A., x, pp.224, 240, 265, 284.
 - (vi) H.M.S.S.C.R., xv, 8, p.23; Annandale Book, i, p.26.
 - (vii) T.A., x, p.319; Tenlet, i, p.281.
 - (viii) Wigton Charter Chest, 98.

1557 and was in office during 1558 (i). The office was vacant during much of 1559; Terreglis, as a Protestant, was warded in Edinburgh castle, but was restored to office on the conclusion of peace in July 1560 (ii). His appointment was renewed on 4 September, 1561 by the new sovereign, and again in 1563 (iii); he remained in office at least until October, 1567, when he was in rebellion, not acknowledging the coronation of James VI (iv).

James Douglas of Drumlanrig was appointed warden on 21 June 1568, and was probably assisted by his son William (v). Herries (i.e. Terreglis), however, still claimed to be warden on behalf of Queen Mary (vi).

There was no official warden in October, 1569, and the office remained vacant throughout the civil war (vii).

John, 8th Lord Maxwell, was given a commission of wardenry on 26 August, 1573, with the keeping of Lochmaben castle; this was renewed in June 1575 (viii). He resigned "willinglie upoun his awin motioun" on 25 May 1577, and was warded the following August on suspicion of intent to raise trouble on the borders (ix).

Archibald, 8th Earl of Angus, already acting as Lieutenant, was appointed on 25 May, 1577; he resigned on 25 March, 1578. John Johnstone of that ilk, and Alexander Jardine of Applegarth acted as his deputies (x).

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- (i) Ex.R., xix, p.414; T.A., x, p.350.
 - (ii) C.Scot.P., i, pp.236, 260, 488.
 - (iii) R.P.C.S., i, p.157; Ex.R., xix, p.505.
 - (iv) R.P.C.S., i, p.580.
 - (v) C.Scot.P., ii, p.446; Diurnal, p.133.
 - (vi) C.Scot.P., ii, p.503.
 - (vii) ib., ii, p.698.
 - (viii) Gaerlaverock Book, i, pp.229-30; ib., ii, p.464, note.
 - (ix) R.P.C.S., ii, p.613; C.Scot.P., v, p.232. Tough asserts that John, 4th Lord Herries, was warden on 6 December 1578, giving as his source the reference R.P.C.S., ii, p.570; this passage refers back to 1564 when Herries, as Maxwell of Terreglis, was warden, but states quite definitely that John Lord Maxwell was warden on this date.
 - (x) R.P.C.S., ii, p.678; C.Scot.P., v, p.265.

John, 8th Lord Maxwell, was reappointed on 25 March 1578, and was deposed in January 1579; Robert Maxwell of Cowhill acted as his deputy (i).

John, 4th Lord Herries, was reappointed on 23 January 1579; he demitted office in August (ii).

John Johnstone of that Ilk was appointed warden on 24 August 1579; he was in office during 1580, and was denounced rebel on 22 April, 1581 (iii).

John, 8th Lord Maxwell, was reappointed on 29 April, 1581 and was deposed for "slewthfulnes" on 19 November, 1582, possibly because of continuous absence from his march. Robert Maxwell of Cowhill again acted as his deputy (iv).

John Johnstone of that Ilk was reappointed on 19 November 1582 (v); he was in office at least until 13 May 1586 (vi) and it is possible that he legally remained warden until his death on 5 June 1587. Scrope, the English warden, regarded Johnstone as warden as late as 6 February 1586, Edward Maxwell of Tynwald being his deputy at the time, although Johnstone had been imprisoned by John Lord Maxwell between July and December 1585 (vii). The history of the wardenship is, however, difficult to elucidate during the years 1585-7.

John, 8th Lord Maxwell, proclaimed himself as warden to the English warden on 15 November, 1585, shortly after the restoration of the 'banished lords', possibly on hereditary as well as political grounds (viii).

(i) R.P.C.S., iii, pp.73-86, 286-7.

(ii) ib., iii, p.86; Annandale Book, i, p.40.

(iii) R.P.C.S., iii, pp.207, 315, 374.

(iv) ib., iii, pp.378, 531; C.B.P., i, 103.

(v) R.P.C.S., iii, p.531; commission dated 26 December 1582.

Ex.R. xx, p.491.

(vi) R.P.C.S., iii, pp.607, 638, 746. Tough's statement that "he ceased to be warden probably before 16 September 1585" (p.286) is inaccurate.

(vii) Hamilton, ii, pp.706-7; J.Scot.P., viii, p.7; Annandale Book, i, p.xvii.

(viii) C.B.P., i, 392; C.Scot.P., viii, p.153.

but this claim does not seem to have been supported for long by the new government, and early in 1586 he was put in ward for Roman Catholic practices. It is probable that Johnstone continued as warden on his release from Maxwell's power, although Scrope on 26 January considered the wardenship to be vacant on Maxwell's imprisonment, and presumably had accepted Maxwell as de facto warden (i). The implication in the Privy Council records that Maxwell was officially warden on 23 March, 1586 (ii) receives little support from other records. A bond undertaken by him in May 1586 indicates that he was not warden at this time, nor had he been for some time previously (iii); it is probable that the Council records, merely recording the actual words of his complaint, give an appearance of legitimacy to his claim. Calderwood asserts (iv) that Johnstone died in April 1586 and was succeeded in the wardenship by Archibald, 8th Earl of Angus; this is inaccurate as Johnstone did not die until the following year, and Angus did not become lieutenant of the borders until November, 1586. But this does imply that Maxwell was probably not warden at this time, viz. early 1586. On 24 June, 1586, Archibald Douglas, a Scots commissioner, asserted there had been no Scottish warden of the west march for twelve months; this probably refers to Johnstone's imprisonment by Maxwell and also to the fact that, in view of the feud between those two, no effective warden action had been taken by either claimant to the office (v). On 21 August, 1586, Maxwell reasserted his claim, and on 6 September actually met with Scrope; but later in

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- (i) C.B.P., i, 409.
 - (ii) R.P.C.S., iv, p.55.
 - (iii) Caerlaverock Book, i, p.273.
 - (iv) Historie of the Kirk of Scotland, iv, p.647.
 - (v) C.Scot.P., viii, p.469.

September the English believed Andrew, 2nd Lord Ochiltree to be lieutenant and warden, and complained that he had failed to carry out his duties (i). Maxwell was apparently in office on 4 October 1586, although technically at the horn (ii); yet on 21 February 1587 he could not have been warden, as Scrope believed James VI intended to appoint him to that office (iii). On 12 April 1587 Maxwell undertook to go into exile, presumably for his Popish practices (iv).

William, 5th Lord Herries, was appointed on 9 June 1587, possibly in succession to Johnstone who had died four days previously; he remained in office at least until 5 March 1588 (v).

Archibald, 8th Earl of Angus, was acting as warden on 9 July 1588; he died on 4 August (vi).

John Carmichael of that Ilk was appointed on 13 September 1588 and was in office during 1589 (vii). He was absent with the king in Denmark from October 1589 until April 1590, during which period Maxwell officially acted as warden (viii). On his return he continued to act as warden, except for periods of necessary absence at Court when Maxwell took over his duties. In March 1592, Maxwell's illegitimate brother, Robert Maxwell of Castlemilk, acted as deputy. Carmichael resigned on 11 July, 1592, owing to difficulties in coping with disturbances raised by Bothwell (ix).

- (i) ib., ix, p.50; C.B.P., i, 443, 447.
- (ii) R.P.C.S., iv, p.109.
- (iii) C.Scot.P., ix, p.301.
- (iv) R.P.C.S., iv, p.159.
- (v) ib., iv, pp.188, 259. He is designated "Johnne" in error on p.188. John Lord Herries died in 1582.
- (vi) ib., iv, p.794.
- (vii) ib., iv, pp. 322, 397.
- (viii) ib., iv, p.826; C.B.P., i, 653; Moysie, p.80.
- (ix) R.P.C.S., iv, pp.801, 580, 768; C.B.P., i, 686, 750, p.395; C.Scot.P., x, p.702.

John, 8th Lord Maxwell, was reappointed on 11 July, 1592, but was killed by Johnstone at Dryfe sands on 6 December 1593. The "younge larde of Tynnele", probably William Maxwell of Tynwald, was acting as his deputy in September 1592 (i).

On 22 December 1593, the office of warden was granted for two months to a commission of ten men of the west march, headed by William, 5th Lord Herries and including Gordon of Lochinvar, Stewart of Garleis, Douglas of Drumlanrig and other important men of the march; a quorum of this group was to remain permanently at Dumfries to carry out both the international and internal duties of the warden (ii).

William, 5th Lord Herries, was acting as warden in July, 1594; on 21 July notification of his removal from office was given to Bowes (iii).

John, Lord Hamilton, appears to have been chosen Lieutenant and warden on the west march, according to a despatch of Bowes dated 14 July; his commission was granted, without the authority of the Council, before 30 July (iv).

William, 5th Lord Herries was warden in December 1594, and remained in office until dismissed sometime before 6 November 1595 (v).

John Carmichael of that Ilk was re-appointed warden about 29 December 1595, but refused to accept the office and it was still vacant at the end of January 1596 (vi).

On 27 May 1596, three barons of the west march, Robert, Lord Sanguhar, John Gordon of Lochinvar and Alexander Stewart of Garleis were appointed

(i) R.P.C.S., iv, p.767; ib., v, p. 112; commission dated 28 July 1592, Gaelraverock Book, ii, p.464 (note); C.B.P., i, 773.

(ii) R.P.C.S., v, pp.112-3

(iii) C.Scot.P., xi, pp.372, 379.

(iv) ib., xi, pp.375, 395

(v) ib., xi, pp.498-9; ib., xii, pp.39, 56; C.B.P., ii, 11.

(vi) C.Scot.P., xii, pp.99, 101-2, 137.

to act as joint wardens; but they appear to have refused to exercise the office, although charged to do so until September (i). No warden was in office on 18 July, 1596, although there was a rumour that Johnstone would be restored to that office (ii).

James Johnstone of that Ilk was actually appointed about 28 July 1596, but was removed from office before 21 August 1597, when the office was vacant (iii). Andrew, 3rd Lord Stewart of Ochiltree, was appointed on 28 November, 1597, and dismissed on 30 June 1598 (iv).

William, 10th Earl of Angus, was appointed on 3 July, 1598 for one year; the appointment was renewed on 31 July 1599 (v).

John Carmichael of that Ilk was reappointed as warden on 18 September 1599, but the appointment did not take effect until 15 December, as Angus, in spite of Carmichael's commission, refused to proclaim him warden. He was killed in office on 16 June 1600 (vi).

William, 5th Lord Herries, was reappointed on a temporary basis on 17 June 1600, Johnstone of Newbie acting as his deputy (vii).

James Johnstone of that Ilk was reappointed on 13 August 1600, and was in office during 1601 and 1602 (viii).

4. Liddesdale -----

Patrick, 3rd Earl of Bothwell was responsible as Lord of Liddesdale for its control. During his minority, his tutor and uncle, Patrick, Master

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- (i) R.P.C.S., v, p.292; C.Scot.F., xii, p.237.
 - (ii) ib., xii, p.282.
 - (iii) R.P.C.S., v, p.304; C.B.P., ii, 721, 739.
 - (iv) R.P.C.S., v, pp.425, 466.
 - (v) ib., vi, p.17.
 - (vi) ib., vi, pp.33, 117, 850; C.B.P., ii, 1118-9.
 - (vii) C.B.P., ii, 1118; R.P.C.S., vi, p.117.
 - (viii) R.P.C.S., vi, pp. 155, 240, 830.

of Hailes, accepted this responsibility and acted on his behalf, e.g. in 1518 (i). From March 1526 until September 1527, Angus, who was Lieutenant at this time, had control of Liddesdale; after this date control was apparently restored to Bothwell or his tutor (ii). In July 1528 Bothwell undertook the 'rule' of Liddesdale himself, and the following year promised to visit the area and keep control efficiently for the future (iii). This promise he repeated in March 1530, but later in the year he was put in ward during the royal raid; he was released on 16 September to perform his duties, but in June 1532 he was again in ward and unable to act (iv). James Sandilands of Calder was appointed keeper of Hermitage in August 1532, and drew wages for this office from September 1532 - October 1533; on 19 November 1533 he was charged to deliver Hermitage to Maxwell (v). Robert, 5th Lord Maxwell, was given the rule and governance of Liddesdale on 26 November 1533. He was paid until the end of June, 1534, and acted in both internal and international affairs until 12 July (vi). Patrick, 3rd Earl of Bothwell took over the office of wardenry within the bounds of Liddesdale on 12 July 1534, with Patrick Hailes (? Master of Hailes) acting as his Lieutenant or deputy; but in May of the following year he was once more in ward (vii). Malcolm, 3rd Lord Fleming unwillingly undertook the control of Liddesdale on 27 July, 1536, but had already been acting in the capacity of keeper in August 1535 and January 1536 (viii).

(1) A.D.C., pp.122, 124. Patrick Hepburn, prior of St Andrews, also acted as a tutor to Bothwell, and appears to have had some responsibility for Liddesdale.

(ii) Hy.VIII, iv, 1, 2017; ib., iv, 2, 3404.

(iii) A.D.C., pp. 279, 311.

(iv) ib., pp.324, 328, 340, 379.

(v) ib., p.382; T.A., vi, pp.165, 217, 314.

(vi) A.D.C., pp.410, 413, 422, 426; T.A., vi, p.237.

(vii) A.D.C., pp.426, 439; Hy.VIII, vii, 1588.

(viii) A.D.C., p.455; T.A., vi, pp. 265-6.

Robert, 5th Lord Maxwell was again in charge of Liddesdale before 7 September 1537 and held a justiciar's court at Hermitage in March 1538, with Robert Johnstone as his deputy. He drew wages as keeper of Hermitage from April to July, 1538 (i). He acted for Liddesdale in May 1541 and in February 1543 was removed from office in favour of Bothwell.(ii)

Patrick, 3rd Earl of Bothwell was restored to the Lordship, and was acting as governor on 8 February 1543, with his kinsman Patrick Hepburn as Captain of Hermitage. In May and June he was ordered to hold days of truce with England (iii). In March 1549 Robert Elliot of Redheugh was Captain of Hermitage. There was a summons of treason against Bothwell in May 1550 (iv)..

Walter Scott of Branzholme accepted office as keeper of Liddesdale as from 28 June 1550; his commission was dated 3 April 1551 (v). He was killed in October 1552.

John Maxwell of Terreglis was given authority to give and receive redress for Liddesdale on 13 July 1554 (vi).

James Haliburten, Prevost of Dundee, 'Tutor of Petour', was acting as keeper prior to September 1556 (vii).

James, 4th Earl of Bothwell drew wages as keeper of Hermitage from September 1558 to January 1559 (viii).

John, 6th Lord Borthwick was keeper of Liddesdale in December 1560, and remained in office at least until March 1561 (ix)..

(i) Hy.VIII, xii, 2, 666. Armstrong, App.xxx; TA.,vi, p.402. The title keeper of Hermitage seems to be the same as keeper of Liddesdale, and is not to be confused with the deputy official, Captain of Hermitage.

(ii) Hamilton, i, p.73; A.D.C.,p.523.

(iii) A.D.C., p.523; Hamilton, i, pp.457, 520, 533.

(iv) Armstrong, App.xlix; R.P.C.S., i, p.100.

(v) ib.,i, p.113; Scotts of Buccleuch, ii, p.201.

(vi) R.P.C.S., xiv, p.135.

(vii) Teulet, i, p.287.

(viii) T.A., x, p.409.

(ix) C.Scot.P., i, p.499; C.S.P. (For.) 1560-1, 16.

Alexander, 5th Lord Hume was appointed keeper of Liddesdale on 12 August 1562 (i).

James Stewart of Traquair was keeper of Hermitage in December 1562.

Robert Elliott of Redheugh was Captain of Hermitage in June 1563 (ii).

James, 4th Earl of Bothwell was probably restored to this position in September 1565 when he returned from exile in France. Martin Elliot of Braidley may have been appointed Captain of Hermitage in November 1569 (iii).

John Carmichael of that Ilk was keeper of Liddesdale in June 1574, having probably been appointed the previous November (iv). He was in office in July 1575 at the time of the trouble at Redeswyre (v).

Archibald, 8th Earl of Angus was acting on behalf of Liddesdale immediately after this date, and one "Mr Hume" was regarded as Keeper in October 1576 (vi). Carmichael, who had been imprisoned in England, returned in November and was in office in February 1576, (vii). He was removed from office in March 1578 on the fall of Morton, but was re-appointed on 18 November and remained in office, with Robert Elliot of Redhaugh as his deputy, at least until September 1580; he was dismissed before 13 January 1581 (viii).

William Ker of Cessford was appointed keeper of Liddesdale on 13 January 1581, in addition to his position as warden of the Middle march. Andrew Ker (? of Fawdensyde) and James Ker of Greenhead acted as his deputies. He

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- (i) H.M.S.C.R., xii, 8, p.184; T.A., xi, p.195.
 - (ii) T.A., xi, p.234; R.P.C.S., i, p.240.
 - (iii) R.P.C.S., ii, pp.55-6; Scots Peerage, ii, p.164.
 - (iv) C.Soot.P., iv, p.683. Spotswood (History, ii, p.194) asserts Carmichael was appointed warden of the Middle march at the same time as Coldenknows and Maxwell; but the office to which he was appointed was the Keepership.
 - (v) C.S.P.(For.), 1575-7, 218.
 - (vi) Douglas Book, iv, pp.199, 201, 203, 207.
 - (vii) C.Soot.P., v, p.200; R.P.C.S., ii, p.498. See Chap.5, section 4, p.401.
 - (viii) R.P.C.S., iii, pp.47, 262, 352, 344, 347; C.Soot.P., v, p.512.

remained in office at least until June 1583 (i).

James Johnstone of that Ilk was Lieutenant of Liddesdale on 13 June 1584 (ii).

Thomas Ker of Fernihurst was appointed keeper of Liddesdale and warden of the Middle march before 13 November 1584, notification being made to the English wardens on 6 November (iii). He was dismissed after the Russell incident, in July 1585.

Francis Stewart, Earl of Bothwell was acting as keeper for some time before 18 April 1586, and until July 1587. In November 1587 the office was apparently vacant, but he was acting again in February 1588. He was responsible for Liddesdale during the king's absence in 1589, though unwillingly because "it was nocht possible to him to performe and caus the same be performit and kepit". He continued to act until committed to ward in April 1591, and was relieved of office about the end of June (iv).

William Stewart of Trequair may have been acting as keeper of Liddesdale in March 1591 (v).

Ludovick Stewart, Duke of Lennox apparently took over Bothwell's forfeited offices in June 1591 (vi).

Walter Scott of Branxholme was appointed keeper on 6 July 1591, but had to leave the kingdom the following month, and surrendered the office. The office was vacant in October, 1591 (vii).

Robert Ker, younger, of Cessford was probably appointed keeper sometime in November 1591 in spite of objections from Lennox who claimed the office through Bothwell's forfeiture. His appointment was made definite before

(i) R.P.C.S., iii, pp.344, 570, 574; C.B.P., i, 101, 245.

(ii) ib., i, 246.

(iii) ib., i, 265; R.P.C.S., iii, p.699.

(iv) ~~C.B.P.~~ C.B.P., i, 421, 563, 709; R.P.C.S., iv, pp.197, 432, 805-6; C.Scot.P., ix, p.537.

(v) C.Scot.P., x, p.485.

(vi) ib., x, p.535.

(vii) ib., x, pp.547, 579; R.P.C.S., iv, pp.649, 668.

31 December 1591, and he was in office at least until 12 June 1592 (i).
Ludovic Stewart, Duke of Lennox, was appointed some time just before
 23 October 1592, with Andrew Ker of Fernihurst as his deputy (ii). Robert
 Ker of Cesford was made deputy keeper about 20 October 1593, Fernihurst
 having been denounced rebel for failure to appear before the Council (iii).
Walter Scott of Branxholme having been given the Bothwell estates, was
 re-appointed to the office on 4 October 1594, the appointment being design-
 ated an hereditary one; but he was acting as keeper prior to this date,
 possibly in March (iv). He remained in office until 1603. Walter
 Scott of Goldilands and Robert Scott of Maining acted as his deputies (v).

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- (i) C.B.P., i, 736, 879; C.Scot.P., x, pp.588-9, 610, 626, 631, 693.
 - (ii) C.Scot.P., x, pp.792, 800, 821. The English regarded Lennox as
 keeper as early as March 1592 (C.B.P., i, p.395) but it is possible
 that the calendar indicates an erroneous endorsement.
 - (iii) C.Scot.P., xi, p.206; R.P.C.S., v, p.101.
 - (iv) R.P.C.S., v, pp.137, 178; C.Scot.P., xi, p.487; R.MS., vi, 166.
 - (v) C.B.P., ii, 35; R.P.C.S., v, p.290 n.; ib., vi, pp. 538-9.

APPENDIX 4Table of Payments made to Wardens of the Marches

This table shows the actual recorded payments made to the wardens of the three marches between the years 1513 and 1603. It was compiled from the printed volumes of the Exchequer Rolls and Treasurer's accounts, and from the manuscript volumes of the Treasurer's Accounts in the Scottish Record Office, Register House, Edinburgh.

Key :

- (1) No Treasurer's Accounts cover this year.
- (2) Payment for half year only.
- (3) Paid half-yearly.
- (4) Payment covers this year and preceding year.
- (5) Payment covers this year and two preceding years.
- (6) One third of fee paid. The payments given cover two of the three joint wardens of this period. There is no evidence of payment to the third person.
- (7) Payment divided between two persons.
- (8) This figure covers almost five months at £50 per month; (T.A., v, p.237) but the warden was also Lieutenant.
- (9) Although there are no accounts, it is probable that payment was made for 1528 and 1529 (A.D.C. p.317)
- (10) Payment includes pension.
- (11) Payment includes pension and fee for Liddesdale.
- (12) Payment covers fourteen months.
- (13) No Treasurer's Accounts for other half year.
- (14) The warden declared he had received this sum, but there is no record of it in the accounts (R.P.C.S., i, p.147).
- (15) Paid in 1570.
- (16) Paid in 1574.
- (17) Payment for half year and preceding year.
- (18) Paid in 1576; payment covers this year and preceding year and a half.
- (19) Payment recorded in accounts but no recipient named.
- (20) Part of Treasurer's Accounts for this year missing.
- (21) The Treasurer was commanded to pay this sum; (H.Mss.C.R., Milne Home, p.49) but there is no record of payment in the accounts.

Actual Payments made to Wardens of the Marches1513 - 1603

Year of Account	East March			Middle March			West March		
1514	£100	.	...	.	£100	...	£100
1515
1516	£100	...	.	...
1517	£50 (2)	...	.
1518 (1)
1519 (1)
1520 (1)
1521 (1)
1522 (1)
1523	£200
1524	£240 (8)	...	.		...	.	...
1525 (1)	£150
1526	£100	.	...	.	£100	...	...
1527	£100	...	.	...	£100	.	£200 (4)
1528 (1)	£100
1529 (1)	£200 (9)	...	.	£100
1530	£100	.	...	.	...	.	£100
1531	£66-13-4 (4) (6)		.	£100
1532	£100	.	...	.	£66-13-4 (4) (6)	.	£100
1533	£100	...	.	£33-6-8 (6)	...	£100 (3)	
						£100 (8) (6)			
1534 (1)	£100
1535	£100
1536	£100
1537	£100	...	.	£100	...	.	£100
1538	£100	.	...	.	£100	.	£100
1539	£100	...	.	£100	...	.	...
1540	£100 (7)	...	.	£100	.	...	.
1541	£100 (7)	.	...	£100	...	.	£300 (5)
1542	£100 (7)	...	.	£100 (7)	...	.	£100
1543 (1)
1544
1545
1546
1547
1548
1549	£300 (5)
1550
1551 (1)
1552	£100	.	...	.	£100	.	£600 (10)
1553	£100	...	.	...	£100	...	£500 (10)
1554	£50 (2) (13)	.	...	.	£100	.	£500 (14)
1555	£100	...	.	£383-6-8 (10) (12)	£2500 (1)		

Year of Account	East March					Middle March					West March				
1556 (1)	£90 (10)				
1557 (1)	£250 (2)	.	...	.	...	.
1558	£100	...	.	...	...	£200 (2)				
1559 (1)				
1560				
1561	£100 (3)	.	...	£100 (3)	.	...	.	...	.
1562	£100 (3)	...	.	£100 (3)	...	.	...	...	£333-6-8 (3)				
1563 (1)				
1564 (1)				
1565	£500 (10)	.	...	£100	.	...	.	...	.
1566	£50 (2)	...	.	...	...	.
1567	£200 (4)(15)	...	.	...	...	£666-13-4 (4)				
1568	£333-6-8 (15)				
1569				
1570				
1571	£150 (17)	.	...	.	...	.
1572	£100 (3)	...	.	...	...	.
1573	£100 (3)	.	...	.	...	.
1574	£100 (3)	...	.	...	...	.
1575	£100 (3)	.	...	.	...	£1500 (10)(18)				
1576	£100 (3)	...	.	...	...	£800 (3)(10)				
1577	£100 (3)	.	...	.	...	£800 (3)(10)				
1578	£100 (3)	...	.	...	...	£800 (3)(10)				
1579	£100 (21)	.	...	£100 (3)	.	...	.	...	£800 (3)(10)				
1580	£100 (3)	...	.	...	...	£800 (3)(10)				
1581	£100 (3)	.	...	.	...	£800 (3)(10)				
1582	£100 (3)	...	.	...	...	£800 (3)(10)				
1583	£100 (3)	.	...	.	...	£800 (3)(10)				
1584	£100 (3)	...	.	...	...	£800 (3)(10)				(19)
1585	£100 (3)(19)	...	.	...	...	£800 (3)(10)				(19)
1586	£100 (3)(19)	.	...	...	...	£800 (3)(10)				(19)
1587				
1588				
1589				
1590				
1591				
1592 (20)				
1593				
1594				
1595				
1596				
1597 (20)				
1598				
1599 (20)				
1600				
1601				
1602				
1603				

APPENDIX 5Judicial and Administrative Lieutenants of the Border, 1513-1603

Antony Dorcees de la Bastie, see Wardens (East March).

James, 1st Earl of Arran, see Wardens (East March).

John, 3rd Earl of Lennex, see Wardens (East March).

Archibald, 6th Earl of Angus, see Wardens (East and Middle Marches).

Colin, 3rd Earl of Argyll, accepted office as Lieutenant of Lothian, Merse and Teviotdale on 24 November 1528, to expel thieves and traitors (viz. Angus and other Douglasses). He took no adequate action in this (i).

Patrick, 3rd Earl of Bothwell, who had refused the office in November 1528, undertook the Lieutenancy on 26 January 1529, for one year, to continue the expulsion of Angus (ii).

George, 4th Lord Hume, was appointed Lieutenant on 6th September 1529 (iii).

James Stewart, Earl of Moray, undertook the Lieutenancy of "the boundis of all the thre wardenryis foranentis Ingland ... to keip the kingis trew liegis in pece ..." on 20 March 1530; but he appears to have been active in the Highlands while James V undertook control of the Borders personally (iv). It was suggested in Council on 20 September 1532 that he be re-appointed, and his commission for the East and Middle marches was granted on 12 October. He acted mainly through deputies until the outbreak of war with England later in the same year (v).

Patrick, 3rd Earl of Bothwell, see Wardens (West March). He acted as Lieutenant in July 1556; on his death in September or October 1556, he was

(i) A.D.C., p.296.

(ii) ib., pp.294, 302.

(iii) H.M.S.S.C.R., xii, 8, p.183.

(iv) A.D.C., pp.323-5, 331.

(v) ib., pp.385, 387-8, 391.

described as a "lieutenant at Annand for danting of the thevis" (i).

James, 4th Earl of Bothwell was Lieutenant in October and November 1558, and acted on the borders during 1559 (ii).

James Stewart, (later) Earl of Moray, acted as Lieutenant from October to December 1561, during a judicial raid based on Jedburgh (iii).

James, 4th Earl of Bothwell was Lieutenant of all the marches in September 1565; he undertook an expedition against Liddesdale in May 1567 (iv).

James Stewart, Earl of Moray, combined the offices of Lieutenant and Regent from September 1567; he carried out a vigorous policy against Liddesdale and the West March (v).

Alexander, 4th Earl of Glencairn, was Lieutenant in the West March in November 1568 (vi).

William, 4th Lord Ruthven, was granted a commission as Lieutenant in January/February 1572; he was active mainly in the Middle March against Ker of Fernihurst's revolt in favour of the Marian party (vii).

Archibald, 8th Earl of Angus, was appointed Lieutenant of all the Marches on 31 July 1574; he was active on the Middle March, particularly in the period following the Reidswyre disturbance. He was re-appointed on 6 December 1576 and was still in office in May 1577 when he was also appointed Warden of the West March. He was dismissed from office about the end of March 1578, when his uncle, Morton, resigned from the regency (viii).

- (i) Diurnal, p.267; Teulet, i, p.281.
- (ii) T.A., x, pp.299, 404; O.S.P.(For.), 1558-9, 350, 1283.
- (iii) R.P.C.S., i, pp.164-88.
- (iv) ib., i, pp.378, 383, 516.
- (v) ib., i, pp.579-80.
- (vi) Maxwells of Pollock, i, p.304.
- (vii) Warrender papers, i, lxxli; R.P.C.S., ii, p.117.
- (viii) R.P.C.S., ii, pp.572, 613; Douglas Book, ii, p.327; ib., iv, pp.199, 201, 203, 207, 233; Ridpath, Border History, p.448.

William, 4th Lord Ruthven, replaced Angus in March 1578; he was discharged from office on 19 January 1579 (i).

Colin, 6th Earl of Argyll, acted as Lieutenant of the West March on 26 September, 1580, having been appointed a few days prior to this date (ii).

John, 3rd Earl of Montrose, was appointed Lieutenant on 19 February 1581, to resist a threatened English invasion; he was relieved of office on 10 June. On 26 July 1582 he was re-appointed as Lieutenant of the East and Middle marches (iii).

James Stewart, Earl of Arran, was appointed Lieutenant of the West march on 26 July 1582, but was captured by the Ruthven conspirators before exercising office (iv).

Francis Stewart, Earl of Bothwell, was acting as Lieutenant of the East and Middle marches about 25 October 1582 (v).

James, 6th Earl of Cleneairn, was acting as Lieutenant of the West march about 25 October 1582 (vi).

Andrew, 5th Earl of Rothes, was appointed Lieutenant and Justiciar of the South East counties on 9 June 1584, to apprehend those involved in the Stirling rebellion, April 1584 (vii).

James Stewart, Earl of Arran, was regarded by the English as Lieutenant of the borders in July 1585, when Francis Lord Russell was murdered (viii).

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- (i) ib., p.448; R.P.C.S., iii, pp.38, 43.
 - (ii) R.P.C.S., iii, p.317; C.Scot.P., v, p.512.
 - (iii) R.P.C.S., iii, pp.393, 498.
 - (iv) ib., iii, p.498.
 - (v) C.Scot.P., vi, p.192.
 - (vi) ib., vi, p.192.
 - (vii) R.P.C.S., iii, p.671; Ex.R., xxi, p.500.
 - (viii) Hamilton, ii, p.668.

Andrew, 2nd Lord Ochiltree, was possibly acting as Lieutenant and warden on the West March in September 1586 (i).

Archibald, 8th Earl of Angus, was appointed Lieutenant and Justiciar "over all the boundis ... foiranent England" on 2 November 1586, although there were English reports of his acceptance of this office as early as 10 October; but he was withdrawn from the West March almost immediately after appointment on the grounds that "the tyme sufferis not that all can be ouertane be ane persoun", retaining the Lieutenancy of the East and Middle Marches (ii). He was active on the Middle March from November 1586 at least until July 1588, his commission being renewed in March 1587; some time between March 1587 and July 1588 he was once more given jurisdiction over the West March (iii).

John, Lord Hamilton was appointed Lieutenant of the West March on 30 November 1586 and was active on that March in January 1587 (iv). On 6 November 1589 he was appointed Lieutenant over all the Marches while the king was absent from the realm; he was active on the Middle Marches during December 1589 and April 1590. His commission appears to have been annulled on 4 December 1590 (v).

Francis Stewart, Earl of Bothwell. On 4 September 1590 there was a report that Bothwell had been appointed Lieutenant some time before although Hamilton was still in office; this was probably one of the rumours about Bothwell current at this time. In February 1591 Bothwell was described

(i) C.Scot.P., ix, p.50.

(ii) R.P.C.S., iv, pp.111, 124; C.Scot.P., ix, pp. 95, 199.

(iii) C.Scot.P., ix, pp.165, 474, 587; R.P.C.S., iv, pp.146-8, 156-7, 213, 794.

(iv) R.P.C.S., iv, p.124; C.B.P., i, 474; Calderwood, iv, p.605.

(v) R.P.C.S., iv, pp.426, 552, 826-7, 804.

as seeking the now vacant office, but there is no evidence that he obtained it (i).

William, 10th Earl of Angus, was appointed Lieutenant and Justiciar over all three marches on 29 June 1598. He was active mainly in the West march. He was continued in office for an indefinite period on 31 July 1599, and was still in office in February 1600 (ii).

(i) C.Scot.P., x, pp.391, 470.

(ii) R.P.C.S., v, p.464; ib., vi, pp.17, 76; A.P.S., iv, p.182.

APPENDIX 6Scottish Border Commissions, 1513 - 1603

Date.	Commissioners.	Purpose.
1. Sept. 1515	William Scott (? of Balwery) Robert Lauder (? of Bass) Patrick, Master of Hailes	to settle complaints on the borders.
2. Sept.- Nov. 1517	Alexander Jardine of Apilgirth John Carruthers of Holmendis James, Abbot of Dundrennan Patrick Hamilton of Kineavill	to deal with a complaint against John Charteris of Amisfield and others, concerning debateable land; and to redress all complaints.
3. Nov. 1520	Thomas, Abbot of Kelso	negotiations for truce.
4. Jan. 1521	Thomas, Abbot of Kelso Andrew Ker of Cesford Adam Otterburn of Auldham	to treat for peace
5. Aug. 1524	James, Earl of Arran John, Earl of Lennox John, Lord Fleming William Scott of Balwery	to discuss the "commoun weile of baith the realmis", i.e. a truce.
6. Aug. 1525	Gavin Dunbar, Archbishop of Glasgow Archibald, Earl of Angus George, Abbot of Holyrood Robert, Abbot of Paisley William Scott of Balwery Adam Otterburn of Auldham	these men were appointed by Parliament to meet with English commissioners to treat for peace and redress attempts.
7. Jan. - Mar. 1526	Archibald, Earl of Angus David, Abbot of Arbroath William Scott of Balwery	to treat for a three year peace, and give redress.

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- (1) Hy.VIII, 11, 1, 861, 863.
 (2) A.D.C., pp.102-4, 107: Hy. VIII, 11, 2, 3328-9.
 (3) Hy.VIII, 111, 1, 1069, 1075; Rymer, xiii, p.729.
 (4) Rymer, xiii, 735; Hy.VIII, 111, 1, 1138.
 (5) A.D.C., pp.204, 206.
 (6) A.P.S., 11, p.297.
 (7) Hy.VIII, 1v, 1, 1665, 1878; T.A., v, pp.262, 264.

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| 8. | Oct. - Dec.
1528 | William Scott of Balwery
Adam Otterburn of Auldham
Andrew Ker of Fernihurst | to treat for a five
year peace. (Treaty of
Berwick.) |
| 9. | Sept. 1531 | William Scott of Balwery
John Campbell of Lundy
Thomas Scott of Petgormo
Robert Charteris of
Amisfield | to organise redress. |
| 10. | Sept. - Oct.
1532 | William Scott of Balwery
John Campbell of Lundy
Thomas Scott of Petgormo
Robert Charteris of
Amisfield | (?) to organise redress. |
| 11. | June - Oct.
1533 | James Colville of East Wemyss
John Campbell of Lundy
Adam Otterburn of Auldham | to treat for truce. |
| 12. | Feb., - May
1534 | William Stewart, Bishop
of Aberdeen
Adam Otterburn of Auldham | to treat for peace, and
settle border disputes. |
| 13. | October 1538 | Robert, Lord Maxwell | reformation of the
debateable land. |
| 14. | January 1540 | Thomas Scott of Petgormo
Henry Balnavis
Andrew Ker of Fernihurst | for the extradition of
rebels and the organis-
ation of redress. |
| 15. | October 1541 | not known | to organise redress. |
| 16. | June, 1542 | not known | to organise redress. |
| 17. | February 1543 | James, Earl of Arran | to treat for truce. |
| 18. | June (1539 x
1545) (?1542) | not known | to define borders. |

(8) A.D.C., pp.293, 298-9; Hy.VIII, iv, 2, 4727, 4925, 5030, 5045; Rymer, xiv, pp.278 et seq.

(9) A.D.C., pp.362-3; T.A., v, p.441; Hy.VIII, v, 411.

(10) T.A., vi, pp.41-2; Hy.VIII, v, 1367.

(11) James V, pp.244-5; A.D.C., p.405; T.A., vi, p.154; Rymer, xiv, p.480.

(12) James V, pp.253-4, 267-8; Rymer, xiv, p.529 et seq.

(13) Hamilton, i, p.53-4.

(14) T.A., vii, pp.281, 297; Hy.VIII, xv, 94.

(15) Hamilton, i, p.114.

(16) T.A., xiii, pp.86, 95.

(17) Hy.viii, xviii, 1, 189.

(18) R.P.C.S., xiv, pp.293-5.

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| 19. June 1551 | Robert Reid, Bishop of Orkney
Robert, Lord Maxwell
Thomas, Master of Erskine
Sir Louis of St.Gelasius | peace negotiations.
(Treaty of Norham) |
| 20. Mar. - Sept. 1552 | Gilbert, Earl of Cassillis
Robert, Lord Maxwell
James Douglas of Drumlanrig
John Bellenden of Auchnoul
Richard Maitland of Lethington | reformation of the debateable land. |
| 21. Dec. 1553 | Robert Carnegie of Kinnaird
John Bellenden of Auchnoul | the organisation of redress, and to draw up a code of border laws. |
| 22. July, 1556 | D'Oysel | to deal with redress; questions of murder and fireraising to be left until redress carried out on all marches. The commissioners either continued to meet until Sept. or a new group of commissioners met then. Border ordinances drawn up. |
| 23. July, 1557 | Robert Reid, Bishop of Orkney
Henry Sinclair, Dean of Glasgow
Robert Carnegie of Kinnaird
John, Lord Herries | to deal with the machinery of redress. |
| 24. September, 1559 | James, Earl of Bothwell
Richard Maitland of Lethington
Walter Ker of Cosford | to ransom prisoners |

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- (19) Rymer, xv, p.265; Leg.Mar., pp.77-98; C.Scot.P., i, p.186.
 (20) R.P.C.S., i, p.120; C.Scot.P., i, p.191.
 (21) R.P.C.S., xiv, pp.115-22; C.Scot.P., i, p.60.
 (22) Tenlet, i, pp.279, 284; Bell Ms., ff.84, 86.
 (23) C.Scot.P., i, p.201; R.P.C.S., xiv, pp.296-8; Brunton & Haig, p.17; Leslie, ii, p.368.
 (24) C.Scot.P., i, pp.246, 250.
 (25) Bell Ms., ff.82-80.

25. Aug. 1561	John Maxwell of Terreglis	not known
26. Sept. 1563	John Maxwell of Terreglis James Douglas of Drumlanrig John Bellenden of Auchnoul Robert Carnegie of Kinnaird	organisation of redress, codification of border laws and the delineation of the frontier line.
27. Sept. 1575	James, Earl of Morton Patrick, Lord Lindsay of Byres Robert, Commendator of Dunfermline Mark Ker, Commendator of Newbattle James Hume of Coldenknows John Sharp	to deal with the Reidswyre disorders.
28. May 1580	John, Lord Herries Mark Ker, Commendator of Newbattle Alexander Hay	to quieten borders
29. Aug. 1580	not known	to deal with the arrears of redress since 1563.
30. Nov. 1582	not known	to deal with frontier controversies to clear the way for the resumption of redress.
31. Oct. 1585	John, Lord Herries James Hume of Coldenknows Alexander Hume of North Berwick Alexander Hume of Hutton- hall	to deal with the Russell murder.
32. June 1586	Francis, Earl of Bothwell Robert, Lord Boyd James Hume of Coldenknows	Anglo-Scottish League.

(25) Bell MS., ff. 89-90.

(26) C.Scot.P., 11, pp.17, 23; R.P.C.S., 1, p.244; Rymer, xvi, p.631.

(27) C.Scot.P., v, p.189. (28) ib., v, p.396.

(29) ib., v, pp.465, 469, 472, 476; this meeting did not take place.

(30) C.Scot.P., vi, p.209; this meeting was suggested but does not appear to have taken place.

(31) ib., viii, pp.74, 139.

(32) ib., viii, pp.452-5, 469; Moysie, p.57; Rymer, xv, p.806.

33. July 1586 not known - probably as redress.
in the previous month.
34. Jan. - Feb. 1588 John Carmichael of that Ilk to organise redress,
Alexander Hume of Huttenhall and to establish good
George Young, Archdeacon order for the future.
of St Andrews
35. May 1591 John Carmichael of that Ilk to deal with redress.
Alexander Hume of Huttenhall
Andrew Ker of Fawdonside
William Stewart of Traquair
36. Oct. 1596 Mark Ker, Abbot of to organise redress.
Newbattle
John Carmichael of that Ilk
George Hume of Wedderburn
George Young, Archdeacon
of St Andrews
37. Feb. 1597 Peter Rollock, Bishop of to deal with redress,
Dunkeld and codify laws.
George Hume of Wedderburn
Andrew Ker of Fawdonside
George Young, Archdeacon
of St Andrews
38. June - Oct. 1597 Alexander, Lord Hume delivery of pledges
George Hume of Wedderburn

(33) C.Scot.P. viii, pp.483, 506-7, 509.

(34) ib., ix, pp.534-5, 537; R.P.C.S., iv, pp.240-1; C.B.P., i, 582, 585, 587, 596.

(35) C.Scot.P., x, pp.485-6; this was to meet in Edinburgh, but there is no evidence that it did so.

(36) ib., xii, pp.335, 305; there is no evidence of this meeting taking place

(37) ib., xii, pp. 386-7; R.P.C.S., v, pp. 360-1.

(38) C.B.P., ii, 667, 766.

APPENDIX 7.Judicial and Military Expeditions to the Borders, 1513 - 1603

Date	Leader and Personnel	Description
1. Aug. 1515	John, Duke of Albany	Military expedition to the Merse against the Hume faction.
2. Sept.- Oct. 1515	Albany	Similar expedition
3. Sept. 1516	Albany	Expedition, based on Melrose and Jedburgh, against thieves in Liddesdale.
4. Mar. 1518	James, Earl of Arran	Military expedition, based on Lauder, against Hume faction for murder of warden Labastie. Muster of groups A - F (4a) summoned for 10 days from 20 March. Hume and other castles captured but military operations abandoned in June.
5. Mar. 1519	Arran	Expedition against rebels
6. Oct. 1524	Arran	Expedition to Liddesdale against thieves. Muster of groups A and B on 12 October, lasted until 18 October. English reported nothing of importance accomplished.
7. April 1525	Archibald, Earl of Angus	Angus on borders at this time, perhaps engaged on raid.
8. May 1525	Angus	Expedition against thieves in Liddesdale; twelve pledges taken.
9. July 1526	James V Angus Arran	Expedition based on Melrose and Jedburgh. Muster of group A and part of group F summoned for 15 days from 17 July. Court held at Jedburgh, 22-24 July, but

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- (1) A.D.C., pp.53-4 (2) ib., pp.57-8 (3) ib., p.71.
 (4) ib., pp.111-21 (passim); T.A., v, pp.154 et seq.; Ex.R., xiv, pp.351-2, 3
 (4a) The muster groups indicated here and throughout this appendix refer to the call-up divisions described in chap. 5, Sect. 3, p.290.
 (5) A.D.C. p.144 (6) ib., pp.210-11; Ry.VIII, iv, 1, 750.
 (7) Ry.VIII, iv, 1, 1259
 (8) ib., iv, 1, 1372; A.D.C., p.218.
 (9) A.D.C., p.244; Leslie, ii, pp.206-7; R.S.S., i, 3449-51.

- apparently ineffective owing to the local opposition of Buccleuch. Battle near Melrose between forces of Buccleuch and Angus; Gosford killed.
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| 10. April 1527 | Angus | Expedition against thieves in Liddesdale. Eighteen thieves killed in action, 12 - 14 hanged; 12 pledges were taken to Edinburgh and later executed. |
| 11. June 1527 | James V
Angus | Muster from group B met on 15 June for service in Liddesdale. Pledges taken. |
| 12. March 1528 | Angus | Raid against Armstrongs of Liddesdale failed because of lack of local support. |
| 13. June 1528 | James V
Angus | Muster summoned for service in Liddesdale on 22 June postponed because of overthrow of Angus. |
| 14. March 1529 | Patrick, Earl
of Bothwell
George, Earl
of Hume | Military expedition to the Merse for expulsion of the Angus faction. |
| 15. May/June,
1529 | James V with
Council | Justice ayres at Lauder, Jedburgh, Selkirk and Peebles for the pacification of the country: general band signed at Jedburgh and Peebles. |
| 16. Oct.-Dec.
1529 | Robert Barton
(treasurer)
Alex. Crawford
(Justice Clerk)
Scott of Balwery
etc. | Justice ayres at Dumfries, Kirkcubright and Wigtown. |
| 17. July 1530 | James V | Muster of groups A, B, E, F and part of G summoned to meet at Peebles and Dumfries on 26 June for 40 days (8000 - 12000 men). Thieves and pledges taken. John Armstrong of Gilmockie hanged with 36 others; 6 pledges |

(10) A.D.C., pp.257-8, 492; Hy.VIII, iv, 2, 4186 (incorrectly calendared under 1528); Buchanan, ii, p.157.

(11) T.A., v, pp.320-1; Leslie, ii, p.214; Pitcairn, i, p.136.

(12) Hy.VIII, iv, 2, 4134.

(13) A.D.C., p.276; Douglas Book, iv, p.128; Hy.VIII, iv, 2, 4397, 4411-12.

(14) A.D.C., p.307; Buchanan, ii, p.163.

(15) A.D.C., pp.306, 311; Newbattle MSS., vol.ix, 3; R.S.S., i, 151-203.

(16) T.A., v, p.387; R.S.S., i, 387-439.

(17) A.D.C., pp. 328-31; Diurnal, p.14; Pitcottie, i, p.335; Buchanan, ii, p.164.

		taken who were later executed.
18. May 1532	James V	Expedition to Liddesdale with small force of 300 men to take Hermitage; failed.
19. June 1534	James V Robert, Lord Maxwell.	Expedition to Eskdaillmure to hunt outlaws and rebels.
20. Oct.-Dec. 1534	James V	Expedition to Liddesdale for apprehension of thieves.
21. April - May 1535	James V William Stewart, Bishop of Aberdeen Archibald, Earl of Argyll	Expedition to Jedburgh for the punishment of Malefactors.
22. June 1536	James V	Muster summoned to Kelso for 20 days from 31 May.
23. Nov. 1538	Not known	Justice ayre at Jedburgh. New wardens of East and Middle marches probably appointed.
24. Jan. 1539	James V and Council	Justice ayre held at Kelso, and probably at Hermitage.
25. April 1540	Not known	Justice ayre at Dumfries: band signed.
26. May 1540	Not known	Justice ayre at Jedburgh.
27. May 1541	Archibald, Earl of Argyll. Malcolm, Lord Fleming. James Kirkcaldy of Grange David Wood Henry Balmeaves Thomas Ballantyne Gilbert, Earl of Cassilis John, Lord Erskine	Justice ayre at Jedburgh.

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- (18) Hy.VIII, v, 1054, 1101. (19) ib., vii, 829.
 (20) ib., Add., i, 949; ib. vii, 1535
 (21) ib., viii, 734, p.468; R.S.S., i, 1622-81, Scotts of Bucc., ii, p.165.
 (22) Wemyss, iii, p.4; R.S.S., i, 2058-61.
 (23) T.A., vii, pp.106-7. (24) Hy.VIII, xiii, 2, 1129; ib., xiv, 1, 156.
 (25) T.A., vii, p.387; Annandale, i, pp.18-20
 (26) T.A., vii, p.387
 (27) Ham., i, pp.73-4; T.A., vii, pp.450, 483.

28. Dec. 1541	James V	Expedition to Jedburgh and Kelso intended, but no evidence that it took place.
29. May 1550	James, Earl of Arran	Expedition to Liddesdale. General band signed at Ancrum.
30. Dec. 1550	Arran	Expedition to Dumfries; possibly a justice ayre.
31. Feb. 1551	Arran	Justice ayre at Jedburgh; musters for 24 Feb. and 4 March. Council at Jedburgh 18 Feb. - 24 March, supported by a French military force under D'Oysel.
32. July 1551	Arran	Muster for 4 July. Justice ayre at Dumfries. Council at Dumfries 5 July - 3 August.
33. Oct.- Nov. 1551	Arran	Justice ayres at Dumfries, Jedburgh and Hawick. Muster at Dumfries on 24 Oct. and at Jedburgh on 17 Oct., later postponed until 3 Nov. Raid lasted from 5 Nov. until 20 Nov.; on 10 Dec. there was a special raid based on Hawick and Dumfries to devastate the debateable land.
34. Oct.- Nov. 1552	Arran	Muster to meet at Jedburgh on 27 Oct.; council active at Jedburgh from 7 Nov. until 9 Nov.
35. Oct. 1553	not known	Muster to meet at Jedburgh on 17 Oct.; council active at Jedburgh from 22 Oct. until 26 Oct.
36. July - Aug. 1554	Mary of Lorraine John Bellenden of Anohnoul	Justice ayre at Jedburgh. Council active at Jedburgh 13 July - 22 July. Mary present on 19 July; Bellenden at Jedburgh 24 July - 8 Aug.
37. May 1555	Bellenden. George, Earl of Huntly Gilbert, Earl of Cassillis James, Earl of Morton	Justice ayre at Jedburgh, muster meeting at Lauder on 14 May. Bellenden at Jedburgh for 10 days.

(28) Ham., i, pp.132, 138.

(29) T.A., ix, p.411; Scotts of Buccleuch, ii, p.197. (30) T.A., ix, p.465.

(31) T.A., ix, pp.473-4; R.S.S., iv, 1144-58; Lorr.Corr., p.344.

(32) R.S.S., iv, 1286-335.

(33) ib., iv, 1407-28, 1437; T.A., x, pp.24, 26, 31, 34.

(34) R.S.S., iv, 1738-43, 1746; T.A., x, p.119.

(35) R.S.S., iv, 2180-4, 2189, 2248, 2671.

(36) ib., iv, 2783-90; T.A., x, p.264; R.P.C.S., xiv, p.137.

(37) T.A., x, p.281; Pitcairn, i, p.384.

38. July 1555	Mary of Lorraine	Muster at Dumfries of group B, with parts of groups C and E, on 20 July for 20 days.
39. Sept. 1555	John Raillton (deputy for Bellenden)	Muster, probably of groups A and B at Jedburgh; Raillton present 6 Sept. - 21 Sept.
40. Dec. 1560	William Lord Borthwick David Hamilton of Preston	Justice ayre at Jedburgh and Hawick.
41. Nov. 1561	James, Earl of Moray James, Earl of Morton James, Earl of Bothwell	Justice ayre at Jedburgh and Hawick. Muster of groups A, B and parts of F met at Lauder on 13 Nov.; accompanied by professional forces. 22 thieves executed; 40-50 pledges and prisoners taken.
42. July 1562	Moray	Expedition to Hawick. 53 thieves taken; 22 acquitted, 22 drowned, 6 hanged, remainder imprisoned.
43. Jan. 1564	Queen Mary	According to English reports, Queen and Council were to be at Jedburgh on 20 January; probably postponed because of bad weather and the Queen's illness.
44. Oct. 1565	Queen Mary. Henry, Lord Darnley	Expedition to Dumfries; muster at Stirling on 30 Sept. for 20 days.
45. Oct. 1566	Queen Mary James, Earl of Bothwell James, Earl of Moray	Justice ayre based Jedburgh and Kelso, with expedition to Liddesdale. Muster of groups A, B and parts of E and F originally summoned for 13 August for 15 days; postponed until 19 October. New proclamations made summoning the

(38) T.A., x, pp.259-61; R.S.S., iv, 3038-9, 3155; R.P.C.S., xiv, pp.13-14
 (39) T.A., x, pp.296, 299; R.S.S., iv, 3042-3.
 (40) C.Scot.P., i, p.499.
 (41) ib., i, p.575; T.A., xi, pp.80, 83, 91-2; R.P.C.S., i, pp.164, 184-7, 188; Buchanan, ii, p.286.
 (42) C.Scot.P., i, pp.636-8. (43) ib., ii, pp.29, 35.
 (44) Diurnal, pp.64-5; R.S.S., v, 2352, 2378, 2383; T.A., xi, p.424.
 (45) R.P.C.S., i, pp.476, 480-1, 489-93; R.S.S., v, 3094-102.

same groups to meet at Melrose on 8 Oct. for 20 days. Council on borders from 10 Oct. until 15 Nov. Queen Mary's ride to Hermitage on 16 October.

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| 46. Oct. 1567 | Moray | Master of groups A, B and parts of E, F and G, summoned to meet at Peebles on 8 November. Surprise operation against thieves in Hawick concluded before this date, probably carried out by private or mercenary troops; 40 thieves taken and mostly executed, 10 imprisoned in Edinburgh Tolbooth. |
| 47. June 1568 | Moray | Expedition to West March. Muster of groups A, F and D, on 10 June for 15 days, giving a military force of 6000 men and artillery; 11 - 24 June, several castles belonging to supporters of Mary taken; some thieves hanged. |
| 48. March - Apr.
1569 | Moray | Liddesdale devastated with English help by a force of 4000 men; court held at Kelso and General Band signed. |
| 49. Sept.- Oct.
1569 | Moray | Muster of groups A, B, C, D and part of E summoned to meet at Hawick for 20 days from 6 October; later postponed until 18 October. Council held court at Kelso from 13 Sept., at Hawick on 20 October, and, after passing through Liddesdale, at Dumfries on 29 October. About 60 pledges taken. |
| 50. ? Oct. 1570 | not known | Muster of groups A, B and parts of C, D, E and F, summoned to meet at an unspecified time for service in Liddesdale. |
| 51. Feb. 1572 | William, Lord
Ruthven | Muster of groups A and B at Jedburgh; band signed, 12 Feb., and pledges taken, 12 - 16 Feb. |

(46) R.P.C.S., 1, pp. 579-80, 585, 587; Balfour, Annales, 1, pp. 341-2; Birrel's Diary, in Dalryell's Fragments of Scottish History, p.12; T.A., MS, 1566-7.

(47) C.Scot.P., 11, pp.430-1, 442-3, 444-6; Diurnal, p.133.

(48) C.Scot.P., 11, p.636; R.P.C.S., 1, pp.650-3; Diurnal, p.143.

(49) R.P.C.S., 11, pp.19, 31, 34, 37, 41-52; Diurnal, pp.149-51.

(50) R.P.C.S., xiv, pp.82-3

(51) ib., 11, pp.117-19.

52. Oct. 1572	John, Earl of Mar	Proclamation of musters to meet at Jedburgh on 22 Oct. for 20 days; English financial aid sought. Expedition probably did not take place because of the death of Mar.
53. Aug.-Sept. 1573	James, Earl of Morton Archibald, Earl of Argyll	Muster of groups A - E summoned for 20 days from 20 July at Peebles and Jedburgh; later postponed until 20 Aug. Band signed and 140 pledges taken.
54. Nov. 1573	Morton	Justice ayre at Jedburgh from 10 Nov. to 8 Dec.; Morton got "grit soumes of money" presumably from remissions.
55. July 1574	Morton John Bellenden of Auchnoul	Muster of lieges of Lanark, Peebles and Selkirk at Peebles on 25 July for 4 days.
56. Oct. 1575	Morton	Muster of groups A and B summoned to meet at Jedburgh for 20 days from 8 Oct. postponed on 30 Sept.
57. Nov.- Dec. 1575	Morton Bellenden Lord John Hamilton Lord Claude Hamilton	Muster of groups C, D and part of E summoned to meet at Dumfries on 24 Oct. for 20 days; later postponed until 16 Nov. Court remained in Dumfries until 2 December. "Brokin men war puneist be thair pursis rather than thair lyvis."
58. Nov.- Dec. 1576	Morton Archibald, Earl of Angus Andrew, Earl of Rothes William, Lord Ruthven	Muster of groups A and B to meet at Lauder on 10 November for 30 days. Council at Jedburgh from 12 November until at least 6 December. Military operations began on 6 December under Angus.

(52) C.Scot.P., iv, p.419; Diurnal, p.316.

(53) R.P.C.S., ii, pp.243, 252, 274; Diurnal, pp.336-7.

(54) ib., p.338.

(55) ib., p.350; R.P.C.S., ii, p.384.

(56) ib., ii, pp.460, 463.

(57) ib., ii, pp.462, 465, 467, 469, 476-7; James Sext. p.158.

(58) R.P.C.S., ii, pp.554, 566-72.

59. July 1577 Angus Bellenden Bellenden ordered to receive complaints at Dumfries, 10 - 13 June. Muster of groups C, D and part of E summoned to meet on 2 July for 20 days; justice court ordered to begin on 10 July.
60. Nov. 1577 Morton Muster of groups A, B, E and F summoned to meet at Dumfries on 10 Oct. for 40 days, to pursue the fugitives from the July court; later postponed until 1 Nov.
61. Nov. 1578 Ruthven Proclamation in July of a muster of groups A, D, E and part of F, for 15 days day and place unspecified. New proclamations in October of groups C, D and E to meet at Dumfries for 20 days from 4 Nov.; of groups A, B and F at Jedburgh from 4 Nov.; and of group G at Peebles for 30 days from 1 Dec. Later these musters were all postponed until 5 Dec. On 15 Nov. a special taxation was authorized to finance a mercenary force for border service, and the muster was prorogued; this taxation was regarded as unconstitutional and the entire operation was apparently abandoned.
62. Nov. 1580 Colin, Earl of Argyll Complaints ordered to be received at Peebles and Dumfries on 24 Sept. in preparation for courts to be held on 4 Oct.; muster of groups C and part E summoned to meet at Dumfries on 15 Oct. for 15 days. This was postponed until 4 Nov., when groups C, D and part E were summoned. Pledges in the hands of private individuals were restored to the government. Muster again postponed until 18 Nov., and, later, postponed indefinitely for lack of promise of English support.

(59) ib., 11, p.614(60) ib., 11, pp.619-21, 640-1.(61) ib., 111, pp.9, 38, 41, 46, 56-7.(62) ib., 111, pp.306-8, 310-11, 317, 321-2, 326, 328-9.

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| 63. Dec. 1580 | John Johnstone
John Carmichael | Courts held at Dumfries and Jedburgh. Muster of groups C and part E summoned to meet at Dumfries for 15 days from 15 Dec.; and of group B at Hawick. |
| 64. Feb. 1581 | John Johnstone
Lewis Bellenden
of Auchnoul | Master of group C summoned to meet at Dumfries on 15 Feb., in connection with a court to be held on 10 Feb. The same month a large muster of groups A - G was proclaimed for 40 days, day and place unspecified. |
| 65. Oct. 1582 | James, Earl of Arran
John, Earl of Montrose | Courts arranged to be held at Dumfries and Jedburgh postponed until 2 August and, later, until 20 October, when a muster of groups A - D was summoned. Apparently postponed because of Raid of Ruthven. |
| 66. Nov.- Dec. 1582 | Francis, Earl of Bothwell
Alexander, Earl of Glencairn | Proclamation made in October for muster of groups A and B to meet at Jedburgh and of groups C and D at Dumfries, for 15 days. This superseded by summons of groups A - F and part G to meet James VI at Peebles on 26 Nov., for 30 days; this later postponed until 26 Dec. mainly because of lack of English co-operation. |
| 67. April - May 1585 | ? Arran | Expedition to West march to attack Maxwell and his adherents. Muster of groups A - E to meet for 20 days, day and place unspecified; later specified as Peebles on 3 May. This was prorogued on 23 April, and a special commission given to John Johnstone to attack Maxwell. |
| 68. Dec. 1586 | Archibald, Earl of Angus
Lewis Bellenden
of Auchnoul
James Hume of Coldenknows
Robert Melville
of Murdocairmy
Robert Douglas,
Provost of Lincluden | Proclamation in June for groups A - E to meet at Peebles on unspecified date. In November, group B summoned to meet at Peebles on 1 Dec., and group C at Dumfries on 3 Dec., for 20 days. Postponed because convention of Estates summoned. |

(63) ib., iii, pp.332-3

(64) ib., pp.340, 356.

(66) ib., pp.519, 524, 530-1; C.Scot.P., vi, p.192.

(67) R.P.C.S., iii, pp. 735, 737, 739, 746.

(68) R.P.C.S., iv, pp.85, 114, 124; Douglas Book, iii, pp.285, 288.

(65) ib., pp.448, 498.

69. Jan. 1587 Angus
John, Lord
Hamilton Angus ordered to hold courts at Jedburgh
on 1 January with a muster of group B
for 20 days, Hamilton at Dumfries on
the same day with group C. Hamilton
executed 12 members of the Johnstone
clan and imprisoned 60 thieves; Angus
hanged 16 thieves and took pledges.
70. April 1587 James VI Military expedition against Maxwell,
6 April, based on Dumfries; control
established over the region and Maxwell
promised to leave the country.
71. Nov. 1587 James VI
John, Earl of
Mar
James Hume of
Coldenknows
Alexander Hay Muster of groups A, B and parts of E
and F to meet at Peebles on 1 Nov. for
30 days; and of groups C, D and the
rest of E at Dumfries. James at
Peebles from 6 - 10 Nov.; no evidence
that he was at Dumfries.
72. April 1588 James VI
John Maitland
of Thirlestane
Angus
Coldenknows
Lewis Bellenden Muster of groups A and B summoned to
meet at Dryburgh on 18 April; James
at Jedburgh from 19 - 26 April.
Redress given to England.
73. May - June
1588 James VI
Maitland
Angus
Bellenden
Alexander Hay Muster of groups A - F and part of G
summoned to meet, finally, at Dumfries
on 29 May, for 20 days; object to cap-
ture Maxwell and his adherents. Courts
held at Dumfries until 24 June. Max-
well captured and several castles
taken.

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- (69) R.P.C.S., iv, p.124; C.B.P., i, 472, 474, 476, 478, 481;
Calderwood, iv, p.605.
- (70) R.P.C.S., iv, pp.158, 172; Moysie, p.62.
- (71) R.P.C.S., iv, pp.221-2, 225; Moysie, p.65; C.B.P., i, 560, 563.
- (72) R.P.C.S., iv, pp.247, 271, 275; Moysie, p.67; Calderwood, iv, p.678;
C.Scot.P., ix, p.557.
- (73) R.P.C.S., iv, pp.285, 292; Calderwood, iv, p.678; Moysie, pp.67-9.

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| 74. Oct. 1588 | James VI | Muster of groups A - G to meet at Dumfries on 1 Oct. for 30 days; no evidence that this took place. |
| 75. Jan. 1590 | John, Lord Hamilton | Group D summoned to meet at Dumfries on 8 Jan. for 20 days. |
| 76. July- Aug. 1591 | James VI
Maitland
Ludovic, Duke of Lennox
Lewis Bellenden | Muster of groups A and B, with Stirlingshire, summoned to meet at Edinburgh on 7 1 July (30 June) for 15 days, for an expedition against Bothwell and Hume. On 6 July at Kelso, where a band was taken from borderers to pursue Bothwell. Muster of parts of groups A and B recalled for an indefinite period from 6 August; band taken on this date to pursue Bothwell and Hume, although Hume had already submitted to ward in Blackness. Muster disbanded on 7 August. |
| 77. July 1592 | James VI
Maitland
Lennox
John Cockburn | Expedition against adherents of Bothwell after raid on Falkland; in Dumfries from 8 - 12 July. New warden appointed; caution taken from supporters of Bothwell |
| 78. Oct. 1592 | James VI | Muster of groups A and B, with Stirlingshire, summoned to meet at Peebles on 25 Sept. for 15 days, for service against Bothwell; later postponed until 10 October, for which day parts of group F were also summoned. At Jedburgh on 14 Oct. with a force of between 2000 and 3000 men, apparently without results. |
| 79. Oct. 1593 | James VI
Maitland
Cockburn | Muster of groups A and B to meet at Lauder on 12 Oct. for 15 days. At Jedburgh on 15 Oct. |

(74) R.P.C.S., iv, p.292.

(75) ib., iv, pp.436-7.

(76) ib., iv, pp. 643-4, 648, 662, 667-8; Calderwood, v, pp. 133, 138.

(77) R.P.C.S., iv, pp. 765-9.

(78) ib., v, pp.12 - 14; Moysie, p.98; Calderwood, v, p.177.

(79) R.P.C.S., v, pp. 97-8, 101; Moysie, p. 105 - 6; Calderwood, v, p.269.

80. Aug. 1594	Cockburn Robert Douglas	Justice ayres held at Jedburgh and Dumfries.
81. Oct. 1595	James VI	Muster of groups A - E to meet at Dumfries on 20 Oct. for 30 days; no evidence that this took place.
82. April, 1597.	James VI Lennox William Lord Herries John Carmichael Cockburn	Muster of groups C and D to meet at Dumfries on 30 March for 20 days; James in Dumfries before this date. Court held at least from 1 - 5 April and James returned to Edinburgh on 13 April. Probably to be linked with the commissioners' meeting of February.
83. Nov. 1597	James VI Lennox Herries Carmichael	Muster of groups C, D and part of E summoned to meet at Dumfries on 20 Oct. for 20 days; later followed by the institution of a quarter system (83a). Courts at Dumfries 4 - 29 Nov.; 36 pledges taken, and 15 thieves hanged. King met with English warden.
84. April 1598	Andrew Stewart, Lord Ochiltree	Muster of groups C and D to meet at Dumfries on 15 April for 15 days.
85. Sept. 1599	William, Earl of Angus	Muster of parts of groups B and D to meet at Langholm and Dumfries on 24 and 22 Sept. respectively, for 15 days.
86. Feb.- Mar. 1602	James VI James, Earl of Glencairn George Hume of Spott James Elphinstone of Barnston	Muster of parts of groups B and C to meet at Dumfries on 18 Feb., for 15 days; postponed until 24 February, when groups A, B and C were to meet. Court held at Dumfries from 28 Feb. until 7 March.

(80) R.P.C.S., v, pp. 754-6

(81) ib., v, pp.228-9(82) ib., v, pp.366, 373, 378; Calderwood, v, p.625; C.B.P., ii, 577.

(83) R.P.C.S., v, pp.417-18, 421-6; Moyses, p.135; C.B.P., ii, 839-40.

(83a) see Chap. 5, section 3, p.292.

(84) R.P.C.S., v, p.481.

(85) ib., vi, pp.27, 838-9.(86) ib., vi, pp.337, 351, 355-8; C.B.P., ii, 1447.

87. Oct. 1602

(3) James VI.
John, Earl of
Montrose
Ochiltree
Hume of Spott
Angus

Justice courts held at Dumfries under
Montrose and Ochiltree, 8 - 19 Oct.; at
Peebles on 26 Oct.; and at Jedburgh, under
Angus, 28 Oct. - 2 Nov. To assist the
Jedburgh court a muster of group B was
summoned on 25 Oct., for 15 days. General
Band signed at Dumfries, Peebles and
Jedburgh; 11 thieves hanged, all probably
at Dumfries.

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with the abbreviations by which the work may be cited in the text, arranged alphabetically by the abbreviations.

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Notes on the Maps

The function of Map 1 is generally to give an impression of the area discussed by the thesis as a whole, and in particular to illustrate certain points made in Chapter 1, section 1. Two contours, at 500 and 1,000 feet respectively, have been chosen to indicate the mountainous nature of the terrain and the difficulty experienced by the central government in Edinburgh in maintaining contact with the major trouble spots in West Teviotdale, Liddesdale and Annandale. The natural transfrontier and internal routes described on pp. 5 - 9 have been indicated. The more important places mentioned in the thesis have been marked, especially the places most commonly used by the wardens of the marches for meetings and days of truce (see p.125).

Map 2 is intended to indicate the extent of baronial and regalian jurisdictions in Roxburghshire and Berwickshire. The main problem here was to map units of jurisdiction which were not only in many cases broken up geographically, but which have also left little trace of their exact boundaries (i). The solution I have adopted was based on a suggestion by Professor Denys Hay (ii). The caput of each barony, as the centre of each unit of jurisdiction, was first plotted (as a black square) on the map; then places known to be within each of these units of jurisdiction were plotted

(1) For a discussion of a problem similar to this see L. Febvre, 'Limites et Frontières - Instructions générales pour assurer l'unité des recherches sur le mode de représentation des limites anciennes', Annales, 11, 1947, pp.202-4.

(ii) D.Hay, 'Geographical Abstractions and the Historian', Historical Studies: 2, ed. Michael Roberts, Lond., 1959, p.13. (Paper delivered to 3rd Conference of Irish Historians.) For an example of the use of this technique see map in G. Dupont-Ferrier, Etudes sur les Institutions Financières de la France, 1, Paris, 1930.

(as small black circles), and joined by lines to its caput. Although this method cannot show the exact area over which any jurisdiction was wielded (which is probably impossible to reconstruct), it does indicate the extent covered by each of these units, and their geographical complexity. It should, however, be noted that, in constructing the present map, places have been plotted only if identified with a fairly high degree of certainty; many places have been omitted from the map as being at the moment unidentified.



